



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

December 28, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (7099 3220 0001 4436 3906)

John A. Riley
Vinson & Elkins LLP
2801 Via Fortuna, Suite 100
Austin, Texas 78746-7568

David P. Poole
Range Resources Corporation
100 Throckmorton Street, Suite 1200
Fort Worth, Texas 76102

Re: Emergency Administrative Order Issued December 7, 2010
Docket Number: SDWA-6-2011-1208

Dear Mr. Riley and Mr. Poole:

On December 7, 2010, the United States Environmental Protection Agency ("EPA") issued an Emergency Administrative Order ("Order") to Range Resources Corporation and Range Production Company (collectively, "Range") pursuant to Section 1431 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300i. Paragraph 50(D) of the Order requires Range Resources to submit to EPA a survey that identifies and provides locations of private water wells within three thousand feet of the Butler and Teal wellbore tracks and the wells used by the Lake County Acres public water supply system. This paragraph also requires Range Resources to submit a sampling plan for these wells that includes both head space and dissolved constituent sampling. The delivery date for the survey and sampling plan is within five business days of receipt of the Order, or December 14, 2010.

On December 15, 2010, EPA and Range Resources met to discuss the Order. At this conference, Range Resources asserted that it would not comply with the Order, particularly (but not limited to) Paragraph 50(D). As of the date of this letter, EPA has not received any survey or sampling plan that complies with the Order nor has EPA received any indication that a survey or sampling plan is forthcoming. As such, Range Resources is in violation of the Order.


Section 1431 of the SDWA, 42 U.S.C. § 300i, provides EPA broad authority to enforce the Order, including commencement of a civil action seeking an injunction and a civil penalty of up to \$16,500.00 per day of violation or noncompliance. Due to Range's Resources failure and refusal to comply with the Order in the time prescribed by the Order, Range Resources may be

subject to a civil penalty assessment under Section 1431(b) of the SDWA, 42 U.S.C. § 300i(b). EPA urges you to reconsider your position on this matter and comply with the Order.

On December 27, 2010, EPA received your letter to Dr. Armendariz from Mark D. Whitley, Senior Vice President, Range Resources Corporation. EPA is in the process of reviewing this letter, and will respond under separate cover; however, Range Resources expressed interest in meeting with EPA again prior to the Texas Railroad Commission meeting on January 10th. Because I and several members of my staff will not return to the office until after January 3, we would be available to meet at a mutually convenient time after this date.

If you have any questions specific to this letter, please contact Tucker Henson at (214) 665-8148.

Sincerely,



John Blevins
Director
Compliance Assurance and
Enforcement Division

Administration Workpaper

Prepared by Johnny Ross 07/24/2012

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: B-3-A

Assignment Guide Name: Field Work

Origination Doclink: [Notes Link](#)

Subject: [r1] John Blevins Interview

Subsection:

Prepared, date	Johnny Ross, September 25, 2012, modified on 10/26, 12/5.
Reviewed by, date	K. Butler, 12/14/12, comments: Notes Link , approved with minor PM adjustments.
Reviewed by, date	

OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Purpose: To interview [Region 6 key staff](#) to evaluate the region's issuance of the 1431 Emergency Order against Range Resources. This will assist in answering our overall objective of determining if EPA Region 6's issuance, implementation, and withdrawal of the emergency order under the Section 1431 of the Safe Drinking Water Act met all requirements of the Act. We will also:

- Determine if the region's 1431 actions for Range Resource were compatible to other 1431 actions for other violators.
- Determine the applicability of the Information Quality Act to Region 6's press release concerning its 1431 actions.
- Determine if the region's interaction with State official (Texas Railroad Commission (RRC), Texas Commission on Environmental Quality (TCEQ), EPA headquarters, and other stakeholders was appropriate and in accordance with Section 1431 guidelines.

- Address/evaluate and report on each of the eight items enumerated in EPW's letter dated June 19, 2012.

Source: Personal testimony of John Blevins, Director, Compliance Assurance and Enforcement Division, Region 6, 214 665-2210.

Scope: Our interview was intended to determine Region 6 staff's role in issuing and withdrawing the 1431 Emergency Order against Range Resources and to obtain records and documentation that show the region's actions. Mr. Blevins previously informed the OIG that he would not be available for our July 31st entrance conference with the Region and interview. Therefore, we conducted a mini entrance conference and interview for Mr. Blevins on July 30, 2012.

Conclusion: Mr. Blevins stated that the region had not done many Section 1431 Emergency Orders. The region had done several routine "orders" but not "emergency orders". He stated that the region first got involved with the Range case through its citizen complaint program. [The region received a complaint from a resident](#) in Weatherford, TX (Parker County) stating that his water well was contaminated with flammable gas. [The complainant also stated that his pump](#) for his well was vapor-locking and not pumping water because of the build-up of gas in the water lines and the water in his home had begun to effervesce. The region sent two inspectors out to the complainant's residence. [The region tested the well water and](#) found exceeding high levels of natural gas in the water well. The region subsequently concluded that the aquifer was threatened and that the levels of gas in the well water posed an explosion hazard which justified issuing an emergency order.

According to Mr. Blevins, [the two EPA inspectors observed the complainant actually ignite](#) the running water from his well. The EPA inspectors decided that the region should conduct sampling and testing of the ground water. The region could have passed the issue on to the State of Texas (Texas Railroad Commission), but decided not to. However, staff from the Railroad Commission accompanied EPA during the sampling and testing. Based on its tests, the region found that the ground water was contaminated by Methane gas. Testing also revealed that gas not only had contaminated the ground water but also had accumulated in the head-space of the water well. [The region concluded that the possible build-up](#) of Methane gas in the complainant's residence presented a potential explosion hazard.

The region based its decision to issue the emergency order on (1) the timeline of occurrences, (2) isotopic finger printing analysis, and (3) ground water testing data. Mr. Blevins stated that considering the timeline of when the water well was installed and the first occurrence of gas in the water suggested that the cause may have been the Butler or Teal gas well because the water well tested free of Methane gas in 2002 when initially installed. However, the water wells tested positive for high levels of methane gas soon after the gas wells started production in that area. Further, Dr. Thyne (See work paper B-3-C-2 [Notes Link](#)) used a technique called Isotopic Finger-Printing to show that the gas in [\(b\) \(6\)](#) well water was statistically the same in composition as the gas being produced by the Butler gas wells, and was *not* similar to other sources of methane gas in the immediate area. In addition, [the region's testing data showed extremely high levels](#) of Methane gas in the ground water and gas accumulations in the head-space of the well

thereby creating an explosion hazard. The region surmised that methane gas could possibly accumulate in (b) (6) home presenting an explosion hazard in his home. [Consequently, the region issued](#) an emergency order under the authority of the SDWA Section 1431 to Range Resources (See Emergency Order at work paper A-5 [Notes Link](#)).

The emergency order required Range Resources, among other things, to provide drinking water to the (b) (6) household and to conduct further testing to determine how the ground water was being contaminated by the gas wells (See Emergency Order at work paper A-5 [Notes Link](#)). [The Region offered to discuss the emergency](#) order with Range Resources but the company had too many conditions, and the region did not desire to comply with Range Resources “conditions”. Thus, Region 6 did not discuss the emergency order with Range Resources. This is supported by additional evidence that Range Resources declined to meet with the Region ([B-3-MNotes Link](#),[B-3-MNotes Link](#),[B-4-1Notes Link](#)).

Mr. Blevins indicated that the region had coordinated with The Texas Commission for Environmental Quality (TCEQ) the Texas Railroad Commission (RRC). Several Region 6 staff members, including the regional administrator, made calls or sent emails to the RRC to discuss the well water contamination and the pending emergency order. Both offices, TCEQ and RRC indicated that they were not planning to take any action in the case. Mr. Blevins stated that the region preferred that the State (RRC) take action, but the state did not. However, the RRC held a hearing the day after the emergency order was issued and found there were no problems with Range Resources operations. No Region 6 staff attended the hearing. [After the hearing, Range](#) stopped providing drinking water and methane monitoring in the affected homes and did not comply with any of the remaining requirements of the emergency order.

When asked, [Mr. Blevins stated that](#) headquarters (OECA) was engaged as usual in drafting the emergency order, but was not the driving force behind the decision to implement the order. When the [Region](#) decided to go to court to enforce the order, OECA got more involved. The Department of Justice also got involved.

[Mr. Blevins said that](#) the decision to withdraw the emergency order was made at OECA’s (headquarters) level. The Assistant Administrator for OECA, staff in Special Litigation Projects section, Department of Justice (DOJ) staff, and regional staff collectively agreed that enforcing the emergency order in the court system was not in the best interest of the public or the best use of the Agency’s financial resources.

Details:

July 30, 2012 – Region 6 Mini Enforcement Entrance Conference

Participants:

Director, Compliance Assurance and Enforcement Division, Region 6, 214 665-2210

Steve Gilrein (SG), Deputy Director, Region 6, Compliance Assurance and Enforcement Division

Susan Jenkins (SJ), Regional Audit Coordinator

Dan Engelberg (DE), OIG Product Line Director

Katie Butler (KB), OIG Project Manager

Johnny Ross (JR), OIG Team Leader
Genevieve Soule (GS), OIG Program Analyst

Dan – Introduction to the project (CR about Range Resources). Want to know about everything that went on throughout the process. Role of HQ in the process?

JR – One of a few visits – fact finding effort mainly. Plan to talk to a lot of the stakeholders. Our process on how we plan to do the project – we are starting in fieldwork where our goal is just to gather as much information as possible. We take this information and look it over and come back with additional questions and draw our conclusions. Then we have a discussion draft that we send to the Agency, then we make changes as necessary and send the agency a draft and EPA gets 30 days to respond. We are hoping to have a final report towards the beginning of the calendar year. During the process feel free to contact me whenever you need to. I'm just here to learn the facts. Our methodology for this assignment – our main objective is to look at and evaluate the 1431 action. Look at the coordination between the state and the region. Also want to interview key people that were involved in the process. Our main entrance conference is tomorrow with the Acting RA.

JB – Expressed some concerns about us speaking with Range Resources and what we think they we are going to learn by speaking with them. Their position is pretty obvious – you can read it in the news, journals, etc.

JR – In the Congressional Request, there were 8 issues that were brought up. Each of these 8 issues had a few questions involved, so we are answering like 24 questions. We need to be able to support whatever it is that we say in response to these 8 issues. We are going to present these issues to the RA tomorrow and allow him to delegate as he sees fit. We think it will be better to have you answer them directly rather than asking them and getting our interpretation. If you know of other people that you think would be beneficial for us to talk to, please let us know so that we can make sure to talk to them.

SG – You have Jerry and Cheryl on Thursday, John today.

JB – It depends on what level of detail you are looking for. We have field people as well, they can be available. There are a lot of people. HQ was involved. DOJ was involved (we had two court cases) – so they were involved a lot.

DE – The impression that some people have is that there was a rouge individual that was the key person and they abused his power and acted politically, etc. So it's in our interest in understanding and in your interest in conveying to get as much information as possible. I'm not sure about the field people at this point.

JR – We would want to see those records.

JB – We can do this as well.

SG – We also have OECA and DOJ contacts as well.

DE – At some point, we will want to know your thought process on the reasoning about how you approached the endangerment side of things.

JB – Remember what we told Range to do was to go and collect more data for us to look at so that we could make further definitive decisions. We weren't telling them to shut down the well or pay us a large sum of money, we just asked them to gather data.

DE – Was the drinking water staff involved in this at all?

JB – Yeah, they didn't really play a role in this case at all.

SG – One person in the water office, but he would have bigger picture things on fracking and what not, but nothing really to do with this case.

DE – How many other 1431?

TH – This is the only one in quite some time (b) (5) (tribal) didn't happen. They had rats in the water system that they were feeding into houses, that was something that we informed them about and they responded so quickly that it was taken care of before we even drew up the order. The other one was over seven years ago.

SG – Have escalation policies and it's a little bit different with Tribal issues.

Interview with John Blevins:

JB – I can just start by giving you a big picture. We don't do a lot of 1431 orders here. This order started out as a routine order – we do a lot of orders out of our water branch, they do the most AOs out of that office. A lot of ceased and assist under the CWA, which is somewhat similar. We do a lot of SDWA stuff with the tribes since we have direct implementation. From our side of things, this was handled as just one more routine order. It was under 1431, but mainly because that was the reg that we had to work under here. We saw this as a threat to a drinking water

aquifer. **A** The methane concentrations in the (b) (6) well were extremely high and we thought that there was a threat. It wasn't that there was drilling or fracking. We just thought that there was a threat, both in the air phase above the wellhead and in the water itself. There was more methane than the water could hold, so it was effervescing.

KB – How did you first learn about this as an issues?

JB – We have a robust citizen complaint program. We get calls from people and we decide whether to go investigate. We can find the dates for you, but at some point we got a complaint, I think from (b) (6) but Jerry can confirm. So we sent a couple of our inspectors out to see what was going on. We do this routinely in the other states and with other industry. We don't go

out for all of them because we get too many, so we screen them and see if there is anything that warrants the Federal government taking a look. Especially if it's near Dallas. So, we went out, our inspectors came back and said that from what they saw, it was warranted for us to go out and take some samples. He showed us what happened with lighting the hose on fire like in the YouTube video. Based on that and some other things was that (b) (6) had a well that was running properly for a long period of time. We guessed that it had always had some level of methane in it because most of the wells in the area did. He started having air locking in his pump on his well. This air locking was getting worse. He also noticed that the water that went into his storage tank was effervescing. He reported that it was not the normal case and that it started happening shortly after the Range Resource wells were put in. With all of that background, we decided to do some sampling. We took samples from both the air and the water phase. The concentrations were very high in both of the phases. Early on, when we went out, people from the TRRC went with us a few of the times early on because that had been our practice.

DE – To your knowledge, had the state been out there before.

JB – I don't know for sure, I think he had tried to get their cooperation and wasn't successful, but I wasn't sure on the timeline for that. We determined that the gas in the private well was very similar to that of the production wells. Isotopic fingerprinting was used to compare them. We also did wet gas ratios. We believe that the wet gas ratios were identical to what was in the Butler and Teal wells. We determined that these two factors indicated that the gas in (b) (6) well was probably not from other shallower sources (like the naturally occurring methane). We tested these other nearby wells and you can see that they aren't really matched up with the Teal and Butler the way that his did. At this point, we determined that there was a threat to a drinking water source that some was using. We also thought that the gas phase was strong enough that it might be reaching the lower level of the explosive limit.

JR – Did you try to eliminate other production wells in the area?

JB – That isotopic fingerprinting was mainly looking at where the methane was coming from. There are no other production wells, but there is the Strom formation that has known amounts of methane in that formation. Given the amount of methane though, led us to think that it didn't all come from that.

JR – How did you eliminate the Strom formation?

JB – From the signature of the gas in the Strom. We put all of these things together, and that's what led us to issue the order. When we issued the order, we wanted a set of good validated data that we could operate on to figure out how bad the aquifer was contaminated and whether or not they should be responsible for it. We thought that the burden should be on them since we had some evidence that they could be contributing. Range had some data that's in there. Also, (b) (6) data was in there. This data was not consistent, but we have high confidence in our data. However, on some of the organics concentrations, all of theirs are a magnitude lower than ours. I can't explain how we could make ours higher, but bad sampling could definitely lead to lower amounts. So we wanted them to submit sampling plans and protocols so that we could approve it. The only data that we felt confident using in the beginning was our own. We could go

back and have them deposed to understand exactly what they did and that it was done correctly. We couldn't do that with their data. They did do some things, but the sampling that they did, they didn't follow what we asked them to do and they just went out and did their own sampling and were able to explain everything away. We don't have expert geologist and drilling folks around here, but there are things that we did know. There is a public water system nearby and they have methane issues, but not at an alarming level. So we were reacting to that level.

JR – The well casing?

JB – There are a lot of theories and (b) (6) n't prove any of them. One, if the cement casing is bad, it could have escaped up toward (b) (6) well. Some people think that was what happened. Another is that maybe Range didn't submit deep enough for reporting when building the well and there could have been another pathway created that gas would get into. A third is that when fracking is going horizontally, you might run into a fissure where the gas can run up through. A fourth is that abandoned wells that weren't properly closed down could cause this. I don't know if we will ever know the answer here. One way to look into this is through running tracers through the well to see where it ends up, but this is not standard practice. (b) (5) To prove the theories would cost millions and millions of dollars.

JR – Isn't there a state requirement that the operating wells be tested?

JB – Yes, the TRRC could tell you what's required for Texas. Every state is different.

JR – The TRRC oversees that and they require the wells get integrity tested every 30 days. Would you have access to those records? I don't know if we looked at those integrity tests for this since that wasn't really our concern. In any well that you have, you have your casing and your collection device – you have bradenhead samples that are between these two things. We looked at all of this – Jerry can give you a little bit more technical information on this. Did we collect all of the data possible? No. We collected enough to give an order to tell the company that they needed to go look into this and see what the story is.

DE – No way that those closed wells could cause this?

JB – We don't believe that it would, it's not flowing and there is an equilibrium going on. (b) (6) well was consistently high. We issued the order – we had offered them an opportunity to consult with us about the order. They said yes, but put so many conditions on the meeting that we didn't have the meeting. Jerry and the staff can tell you what the conditions were, but they were not conditions that we would ever give to a company. Usually in the order, we say come talk to us and we negotiate things and work through everything and some things will change. Range never took advantage of that opportunity.

DE – A hunch as to why?

JB – From an Agency point of view, no, but it did surprise us. This was a fairly unique response. At first they said that they weren't even going to do it because they didn't think that we had

authority. They did provide water to (b) (6) when when they were successful at the hearing for the TRRC, they stopped. After we issued our order, the TRRC decided to have a hearing about this and basically wanted to have a hearing about our order and since it's a state action only, we did not participate. Range presented a whole bunch of data and (b) (6) and some citizens spoke. Then TRRC said that 1. There was no problem and 2. Range had nothing to do with it.

KB – But still, the EPA had the authority to do this?

JB – There is the part of the statute that says we need to look at what the state is doing and see if they are taking care of it. The state was involved in the beginning and there were a series of calls from EPA to TRRC about whether or not they were planning on doing anything about it. Jerry and his staff both made calls and I made a call myself to my counterpart there. It was very straightforward – we are working on an enforcement action compelling Range to do this sampling, is this something that you might be doing sometime in the future and, if so, let's talk about it. At every point, the answer was no. I also made that call to the TCEQ which is the main environmental department even though TRRC has primacy. TCEQ also said no – basically is it was a PWSS, TCEQ would have gotten involved. Al Armendariz also made a call at his level to ask this same question.

KB – So at least four different people made phone calls and some of them made multiple calls.

JB – We prefer on almost any enforcement action for the state to take the action. If the state would have stepped up, we would have stepped back at least initially to see what they would do.

JR – Do you know why the TRRC wouldn't have taken action?

JB – I don't want to speak for the TRRC.

JR – They didn't give you a reason?

JB – No. If you look at the history of the TRRC, they are not a regulatory authority. They have an enforcement authority, but that's not their primary concern. Also, there were a lot of pre-existing conditions here.

DE – You didn't have a vendetta against Range here. In fact, you weren't even certain that the problem was coming from Range. You just wanted to get more information?

JB – Correct – we had enough information to show that Range was the primary suspected, but there was an opportunity here for more information. To be honest, before this order, I didn't even know who Range was. It came in as a citizen complaint and we handled it as such.

DE – Do you have an estimate on how much this would have cost them and, if it turned out not in their favor, what would that have cost them?

JB – This is speculative, so keep that in mind, the collection part would have been many a couple hundred thousand dollars in data collection and analysis – and that was really the bulk of it. Getting (b) (6) water and explosivity meters. We wanted them to do soil gas sampling and indoor air analysis looking for methane build up in their households. They did the soil gas sampling and we never get full results, but there was some things that weren't quite right. The last one was for them to determine the gas flow and remediate as needed. My speculation is that if you believe the aquifer was heavily contaminated, they could have simply just hooked them up to the PWS – and this would have been in the hundreds of thousands range.

DE – Was this the precedent issues here?

JB – Not to speak for them, but that had to weigh. Also, speaking as a citizen, not EPA, they were afraid to have fracking associated with anything having to do with drinking water contaminated. Now, we weren't trying to say that, but things are out there in the press. Again, we thought that they would come here and talk to us – we never meant for this to be a big case. Shortly after, TRRC called a hearing and Range presented a bunch of data that we should have, at the same time, Range took us to court, at the same time we went to court to enforce our order to the court. They were appeals saying that we didn't have authority.

JR – Why did you dismiss the order?

JB – That was an agency decision. OECA, DOJ and the Region – looking at the resources that it would take to go to court. At some point, the Court of Appeals had to make a ruling as to whether we had a case or not. So either C of A says no and it goes away because we didn't have the author. Or, the C of A would say that we had the authority and it would return to the district court where we already were and the district court was sitting on it because he wouldn't rule until it came down from C of A. If it came back then it would have been a trial and that would have been highly resource intensive. Additionally, the Agency is trying to work cooperatively with the industry to try to get more information,. So the Agency took a step back and tried to determine whether or not it was worth it to spend all of that money on this one case, or whether it would be better to spend the resource working cooperatively.

JR – Who made this decision?

JB – At the end of the day, Cynthia Giles would be the one making the decision. However, there was probably input from a lot of different stakeholders within the Agency. HQ was heavily involved in this issue. All along, Range was trying to work this with other things that the agency was looking at with Range to see if we could figure it all out. At the end of the day, all I wanted was to get this data – and the Agency had efforts ongoing to collect data elsewhere. To go to court would have been a couple of years and a lot of my staff time.

DE – How does (b) (6) feel?

JB – I'm sure that he wasn't very happy, Jerry could provide more information on that.

JR – So, is the aquifer still being impacted?

JB – I don't know if anyone has pulled a sample from (b) (6) well any time recently.

JR – So those wells are still running/producing?

JB – Yes, but we have not followed up on that lately. I think that Range sold those wells. As part of the agreement of us both dropping the cases, Range said that they would go sample some other wells in the area, but we haven't heard anything about that. It wasn't an enforceable agreement.

JR – In terms of the sampling and testing data, who do we get that from?

JB – Jerry can get everything to you. The administration record has all of our data – there is some of (b) (6) data in there as well. Also, the records for the case will have it all too. The best source for everyone else's data would be to look at what Range submitted to TRRC for their hearing. Tucker could probably give you that or we could get it. So some sources: the administrative record, the court records, my deposition, and the TRRC hearing info. From OECA, the people to start with would be Steve Chester (Deputy assistant administrator) and Bernadette Rappapold – Special litigation Division (director). The last piece is that up to issuance of the order, HQ was engaged to the extent that they always are – coordinated with them on the Press Release. So, they were engaged, but they were just giving input and not driving the decision. After we issued it and had to decide whether to go to court to enforce the order, they were more involved because DOJ was involved. Most of the work was done in R6, HQ provided some funding to do some sampling and analysis of the data. DOJ was engaged because once we went to court, they represented us. Nat Douglas, would be the guy to talk with there. Suzanne Murray is the Regional Counsel – she was heavily involved with me on the decision points (determining legal sufficiency). At the end of the day, Suzanne and I were the ones that made the decision that we should issue the order.

JB – We were aware of the potential politics of the case though. We were getting a lot of calls from people in the areas where these wells were going in. I was aware that it had the potential to have its own little spin. This is why I made Al Armendariz aware – I didn't tell him about all of our orders. I gave him the background on the context and he gave me some thoughts on it (like go call the TRRC).

DE – They didn't see it as a test case?

JB – No, they just asked questions about whether we were sure and our methods and findings and so on and so forth. So, we understood that it could get more attention, but I didn't think that this was anymore concerning. I do give cease and assist orders where they have to stop. Those I always think that someone is going to come back and question, but usually it just gets done. So, in that context, it wasn't that big of a deal because we were just asking them to get data.

DE – They saw it in a bigger context than you did.

JB – Obviously, but I don't know what it was.

[See second paragraph](#) of letter dated December 28 below.

John Blevins Letter to Range Resource



Region 6 Notice to Range of Violation.pdf

Administration Workpaper

Prepared by Johnny Ross 08/24/2012

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: B-3-I

Assignment Guide Name: Field Work

Origination Doclink: [Notes Link](#)

Subject: [r1] Bernadette Rappold Interview

Subsection:

Prepared, date	Genevieve Soule, August 29, 2012
Reviewed by, date	K. Butler, Approved by KB, 10/26/12.
Reviewed by, date	Johnny Ross, September 12, 2012, October 22, 2012

Title: Director of OECA's Special Litigation and Project Division, Bernadette Rappold

Purpose: The team met with OECA HQ employees that were involved with the Range Resources 1431 order in order to answer our objective to determine if EPA Region 6's issuance, implementation, and withdrawal of the emergency order under the Section 1431 of the Safe Drinking Water Act met all requirements of the Act. Information from this interview will also aid the team in answering our sub-objectives:

1. Determine if the region's 1431 actions for Range Resource were compatible to other 1431 actions for other violators.
2. Determine the applicability of the Information Quality Act to Region 6's press release concerning its 1431 actions.
3. Determine if the region's interaction with State official (Texas Railroad Commission (TRRC), Texas Commission on Environmental Quality (TCEQ), EPA headquarters, and other stakeholders was appropriate and in accordance with Section 1431 guidelines.
4. Address/evaluate and report on each of the eight items enumerated in EPW's letter dated June 19, 2012.

Scope: During the OECA Entrance Conference held on August 9, 2012, Bernadette Rappold was identified as having had a role in the Range Resources case. Johnny Ross contacted Ms. Rappold and scheduled an interview which subsequently occurred on August 15th at 3:30pm.

Source:**Participants**

Bernadette Rappold, Director, Special Litigation and Projects Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assistant (202-564-4387)

Johnny Ross (JR), Team Lead/Program Analyst (404-562-9863)

Genevieve Soule (GS), Program Analyst (202-566-1171)

Date, Time and Location:

August 15th, 2012, 3:30pm EST

Washington, DC

Conclusion:

In terms of the issuance of the order, Bernadette stated that OECA reviewed enough evidence to determine that Region 6 met the criteria for the Imminent and Substantial Endangerment (ISE). She also stated that the Region informed them that they had spoken to the state and that the state seemed ok with them taking the action. She also stated that ISE does not necessarily have to mean an immediate danger but that, in this case, they truly believed that the danger was immediate. Furthermore, she stated that in emergency cases, they do not have to have proof beyond a shadow of a doubt. Because of these things, she believed that they had a strong case.

In terms of the withdrawal of the order, Bernadette stated that the decision was made entirely at the political level. She believes, and recommended, that (b) (5)

█. (Evaluator's note: this mirrors the comments of other interviewees from Region 6.) She believed that they had a strong case and should have followed through with it. Further, she stated that even if they had found out that they were wrong and that Range had not been the source of the contamination, they still did the right thing by issuing the order. She also stated that she did not think that there were any criteria for withdrawing a 1431 order.

Details:*1. Region 6 and OECA knew that the case would be significant*

JR – Could you tell us about your role in the Range Resources case?

BR – This division, Special Litigation and Projects, is the lead in this office for the oil and gas extraction initiative, which is the only new initiative that we have. I can't remember exactly the date, November or December 2010, Region 6 contacted us because they knew that we were in charge of the oil and gas stuff. It was a nationally significant issue – a 1431, and one that dealt with the energy extraction initiative – so they came to us with it. We require that for nationally significant issues.

2. Region 6 contacted OECA and OECA made edits to the order before it was issued

BR - What I remember is that we got a copy of the administrative order. From my vantage point as a lawyer, and I have worked on these before, I thought it wasn't well pled in legal terms. So, a few of us here in the division, myself and Andrew Stewart, we did some additional research and got some more information from the region and we had some back and forth with the region and Adam Kushner, and we provided some edits. We all knew that this would be a sort of precedence

setting issue since it was the first 1431 order to a natural gas company. That whole process isn't really that unusual – the region will propose something and we will offer some suggestions and tweaking, so that was pretty typical. The only thing that I would say was unusual was that there was evidence that there was gas getting into the well and there was fear that it was getting under his house and could explode. So, we had a sense of urgency since we had real fear that something could happen.

JR – Do you have record of that back and forth? We have the original and the final, do you have any iterations?

BR – I personally sent a mark up within a few days of the final. There is probably a little bit back and forth there, and I can get you that.

JR – Do you have a protocol/procedure for dealing with 1431s?

BR – There is a guidance, have you seen that?

JR – I have – could you verify that that is the most current one?

BR – Yeah, I can let you know.

JR – So you finalized that document here?

BR – We sent edits, but it was Region 6 that issued it.

3. OECA believed that Region 6 had spoken with the state and the state was not going to act. However, the state reacted strongly after the fact.

JR – So after the order was issued, then the litigation started?

BR – At some point after it. One part of the law is that we have to show that the state was failing to act. We had spoken to the state, but our understanding is that the Region had spoken to the state and they were sort of ok with our acting. Well, the day after we issued the order, the state of Texas issued a series of press releases that basically said that the EPA was being precipitous and that they had it under control, etc. There was a lot of interest in the press, and then, I don't remember the timing on this, but Region 6 had tried to get Range to come in and talk prior to the order, but Range blew them off. I think shortly after issuing the order, Range did come in. The litigation didn't officially commence until two things happened. Under 1431, if I were to issue you a 1431, you have the right to go into the circuit court of appeals within 45 days and say that we are wrong. Separately, we have the right to go into district court to enforce it. So at some point, Range said that they were not going to comply with the order, but that they were going to do a couple of things out of the goodness of their hearts. Also, the TRRC (in charge of oil and gas extraction), soon after (maybe even the day after) said that they were going to call a hearing about the same facts essentially that we were talking about in our order. So, at one point, there were proceedings happening in the federal circuit court of appeals, federal district court, and the TRRC.

4. There were about four people at DOJ involved with the case

JR – So once Range said that they were not going to do it, then you have to go to district court, so did you play a role in that?

BR – We don't represent ourselves in cases like this, so we have to do a referral to DOJ and that's who officially brings us into court. We don't have the authority to take it to court ourselves.

JR – Who writes that referral, can we have it?

BR – Sure, this is a really short referral – compared to some really big complex cases that could be 150 pages. I drafted it, but Adam Kushner signed it.

JR – Speaking of DOJ, the person that you worked with most at DOJ?

BR – On our case, Keith Toshima and Jeffery Sans and Brad Levine (more minor, but also on at the time). Another guy that we didn't mention at our previous meeting is the guy that was our attorney before the circuit court of appeals and that's Brian Lynk. All of those people are top notch people. So the district court is the lower level, and Brian is the appellate level.

5. OECA reviewed enough of the evidence to feel like Region 6 had a strong case that met all of the criteria

GS – Did you make sure that they met the criteria?

BR – Yes, we were trying to make sure that they had the legal basis for it. We got some documentation from them and we tried to make sure that we understood it and that it really was reasonable. For example, the isotopic fingerprinting.

6. For emergency orders, do not have to prove beyond a shadow of a doubt and it doesn't have to even be as imminent as they thought this case was.

GS – So, in the end, you guys determined that they had the necessary information to meet the criteria.

BR – If you had infinite amounts of time, we might have looked at the whole administrative record, but it seemed like an emergency problem. For example, the one well it was over 6,000 times, and we had independent laboratory analysis, so it was a real problem and this could blow

up. **A** I'm not sure that you know this but in 1431, if we want someone to provide water, we just have to show that they caused or contributed, and it doesn't have to be proven beyond a shadow of a doubt. Given that we thought there was this potential endangerment of the house blowing up - for example, years ago I worked on a 1431 about a contaminant that had gotten in the water and was making its way to the Tucson water supply. And, it was a problem and we needed to pull back the plume before it got there, but we didn't think that if we didn't act immediately that people might die. We thought that was a possibility in the Range case though.

7. The decision to withdraw the order was made entirely at the political level

JR – Were you a part of the process to withdraw the case?

BR – At the point when the discussions were happening to determine whether or not to withdraw, that was all happening on the political level. It was Steve Chester and Avi Garbow that were having those conversations with the counsel for Range – the staff level was not involved. Steve would come out of those discussions and ask us to draft documents to help with that, but we were not directly involved.

JR – We talked to Steve and we learned that there was a letter that Range was going to do some things, did you know about that letter?

BR – Yes, but only because Steve told me about it.

JR – So, Steve and Avi are the only ones that could give us that back and forth?

BR – Yeah, (b) (5)



(b) (5)

JR – Can you get me documentation of those recommendations?

BR – Yes, of course. Just to make it clear, a lot of these documents that I'm going to give you are enforcement confidential – some of them are attorney/client.

GS – Mark it clearly, and we will make sure it's marked clearly as well.

8. If they had continued to litigate, they would have had to put more resources into providing more evidence

JR – Steve mentioned that Range wanted to reset the relationship. Also, he mentioned how much it was going to cost and DOJ said that EPA needed more evidence for court and that would involve more work, so EPA determined that it was better to dismiss.

BR – It would be true that if we continued to litigate, we would have had to have at least a few experts to testify at trial. We had worked with some hydrologists, but to get someone geared up for trial is a huge expense, and we would have to maybe take more samples, but that's not entirely clear. So the biggest expense was retaining these people for expert witnesses and they can charge a lot of money and the bill can run up pretty fast.

9. Bernadette believes that they should not have withdrawn the order because they had a strong case.

JR – In your opinion, was this the right decision?

BR – In my opinion, no. I recommended that we (b) (5) and I do not think that we should have withdrawn it. I think that we had a good case and in fact as we had developed more evidence, I think that the folks in this division came to believe that the case was even stronger than we believed when we first filed it. I think that if you contaminate people's well water, it's important to follow through since we had already started on it.

JR – So, it was not at your level?

BR – As far as I know, that decision was made at the Steve and Cynthia level.

GS – Was the Administrator involved?

BR – I don't know.

JR – What was DOJ's stance on it?

BR – Well, DOJ is an entity, so I don't know, but I know that there were individuals that were perplexed by why we were giving up. But obviously, you can speak to them and get their opinions from them.

10. EPA does not have the money to clean up the aquifer under 1431 like with Superfund

JR – I have a question. If we felt that the groundwater was contaminated enough to have the order, even if it's withdrawn, from a legal standpoint, does EPA still have an obligation to remediate it?

BR – That's a big question. I'm sure that there are people all over the country that have polluted groundwater and EPA is not cleaning it up. We cannot take action everywhere. Generally speaking, in a case like this in 1431, we could go clean it up, but there is not money (like Superfund) to do that. The long and short of it was that I wish we had asked Range to continue efforts, and I'm not sure it was technically possible to clean up the aquifer, but they could have taken some actions to mitigate the problem. The Agency has long said that maintaining groundwater aquifers in a potable way is very important. It's not possible to do it always. I'm not sure in this case whether it would be possible. It's definitely always possible to provide people with good water.

JR – (b) (6) now has started to buy his own water and is litigation with Range.

GS – So, there's criteria under 1431 about ISE and state action.

BR – Just to clarify, ISE doesn't have to be as much of an emergency as this particular case. It might mean that there is contaminants moving in a direction, but we don't have to wait until it gets there.

11. There is no criteria for withdrawing a case

GS – Is there criteria about how/when it's ok to withdraw? The ISE was only “gone” because (b) (6) could provide his own water – was that a consideration?

BR – I don’t know to tell you the truth, but that’s an interesting thought because we might have had to prove that it still existed in court. No criteria for withdraw, that I know of.

12. Bernadette reiterated that she thought that there was a strong case and, even if they were wrong in the end, that they did the right thing in issuing the order.

JR – Interesting things that you would like to add?

BR – I think that we had a strong case. And let’s say, that we were wrong and Range was not the source of the contamination, then it doesn’t mean that we did the wrong thing to begin with. The law doesn’t require a PhD dissertation because it’s a more “emergency” case. Seeing some of the letters from Congress it seems like they are saying that EPA should have known and that we were on a witch hunt. As a person that worked on this case, nothing could be further from the truth. This guy called and said that Texas wasn’t paying attention to him and he has serious amounts of gas in the water. There was so much gas in his well that the pump wouldn’t even work anymore. That’s a lot of gas. So, even if the gas come from somewhere else and we were wrong, I really believe that we did the right thing in issuing this order.

Administration Workpaper

Prepared by Johnny Ross 09/13/2012

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: B-3-M

Assignment Guide Name: Field Work

Origination Doclink: [Notes Link](#)

Subject: [r1] Chris Lister Interview

Subsection:

Prepared, date	Johnny Ross, April 23, 2013.
Reviewed by, date	K. Butler, 4/27/13 (preliminary), 6/6/13, reviewed and approved.
Reviewed by, date	

OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Purpose: To interview Region 6 key staff to evaluate EPA Region 6 issuance of a 1431 Emergency Order against Range Resources. This will assist in answering our overall objective of determining if EPA Region 6's issuance, implementation, and withdrawal of the emergency order under the Section 1431 of the Safe Drinking Water Act met all requirements of the Act.

Source: Personal testimony of Chris Lister, Region 6 Enforcement Branch.

Scope: Our interview was intended to obtain information concerning EPA's issuance and withdrawal of the 1431 Emergency Order against Range Resources and to obtain records and documentation that show OECA's actions and agreement with Range Resources once the order was withdrawn.

Participants: Katie Butler, Project Manager, EPA/OIG/OPE; Johnny Ross, Team Leader, EPA/OIG/OPE. The interview took place in Region 6 conference room, Dallas TX, on August 28, 2012.

Interview: We asked Mr. Lister to give us a description of issuance and withdrawal of the emergency order against Range Resources.

He stated that in August 2010 a residential well owner contacted Region 6's energy advisor, Ron Van Wynk (sp) complaining that his water well was contaminated and state and local officials had not provided assistance. Mr. VanWynk contacted the railroad commission field office to discuss the complaint. Mr. Lister's supervisor asked him to sit in with Mr. Van Wynk to get up to speed on the issue. Mr. Lister along with other Region 6 staff, and staff from the railroad commission visited the complainant's home. The complainant showed them the fizzing tap water.

After discussions with RRC staff, on October 26, 2010 Mr. Lister and other Region 6 staff met RRC and Range Resources staff at the residential well to take water samples and to sample gas from Range's production well. Mr. Lister and his staff took water samples from the complainant's well and a neighboring residential well (b) (6) well). They also took gas samples from the tubing of the gas well for isotopic and compositional analysis; this would help them determine the origin of the gas in the water well.. They offered to split samples with the Range representative, but the representative did not have equipment to sample the water. Also, at that time, they observed that the braden-head of the gas well had unusual pressure, but not sufficient pressure to cause any problem.

Region 6 received testing results on November 16, 2010. Based on the testing results, the isotopic and compositional analysis indicated that gas in the water well was identical to gas from the production well and likely from the same source. To supplement their finding, Region 6 staff consulted Dr. Jeffrey Thyne of Laramie, WY to conduct an independent analysis of the isotopic finger prints and composition of the gases (See work paper B-3C-2). Dr. Thyne's analysis showed the gases originated from the same source and their composition was identical within analytical error. He note that Dr. Thyne had been black balled since his analysis was published. Mr. Lister mentioned data concerning seismic activity in the area that could have created undetectable fractures and faults in the earth. He also mentioned a study by Duke University concerning the geology in the area. He stated that he also attempted to discuss the testing results with Range, but Range was uncooperative. The homeowner shut-in his water well during the first week of September 2010. (Based on the homeowner interview, this may be overstating it. This was Chris Lister's opinion, but the homeowner described this as basically turning off the valve between the well and the house. KB, 6/6/13) I agree, "shut-in" is Mr. Lister description of (b) (6) no-longer-in-use water well. Generally, shut-in means a well (normally oil or gas wells) is no longer in production and perhaps has been sealed with cement. (b) (6) water well, on the other hand, is still producing; however, it has been disconnected from the 5000 gallon holding tank connected to the home which is now being used to store clean water from a commercial source. JRoss 06/10/13.

(b) (6) well was very unusual. His well had high levels of methane, benzene and toluene. (b) (6) well showed a 57% increase in methane gas when Region 6's test results were compared to previous testing. He had hope (b) (6) would be connected to a PWS.

In reference to the RRC's hearing, he stated that Range did not have to justify its position so if EPA had participated they probably would not have won due to their inability to hire essential experts. The RRC would never take action against Range since there was no direct correlation between Range's gas well and the gas in the water well.

He stated that he didn't think that Range Resource would act so extreme when confronted with Region 6 findings. Throughout, Range was uncooperative. Range did not share its data or did not want to meet with the Region until after the emergency order was issued.

Region 6 drafted a short emergency order, but after going through counsel and OECA the order grew into a large document. Mr. Lister did not agree that the order should be as large. He stated the 1431 orders are not unusual. He didn't think the order should have been withdrawn. He express his dissatisfaction in OECA's unwillingness to fund the case (enforce the order in the courts) and hire qualified experts to defend the case.

From the Administrative Record

ENVIRONMENTAL PROTECTION AGENCY REGION VI

IN THE MATTER OF:) Docket Number: SDWA-06-2011-1208

)

RANGE RESOURCES CORPORATION

and

RANGE PRODUCTION COMPANY

Respondents.

(Texas RRC Operator I.D. No. 691703)

Proceedings Under Section 1431(a) of the

Federal Safe Drinking Water Act, 42 U.S.C.

§ 300i(a).

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DECLARATION OF CHRIS LISTER

I, CHRIS LISTER, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an Environmental Engineer in the Water Resources Section, Water Enforcement Branch of the United States Environmental Protection Agency, Region VI. I make this declaration based on my personal knowledge and based on my review of official agency records in the above-captioned action.

2. During the course of conducting official business on behalf of EPA, it is my usual practice to receive analytical results of water samples and communicate these results to consumers of the water that was sampled. In communicating these sampling results to the water consumers, I oftentimes must interpret the results so as to render a "layman's version" of highly technical content. On occasions when my communications with the

water consumers are limited to the "layman's version" and basic health information (e.g. contaminant levels are above the level considered safe for consumption), it is generally not my practice to create a record of conversation or other notation memorializing the

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Range Resources Corp.

Docket: SDWA-06-2011-1208

Administrative Record #32 .

conversation. It is my usual practice to provide copies of the sampling results contemporaneous to or shortly after these communications.

3. Attached hereto as Exhibit A is a true and correct copy of sampling results from water ~.

samples taken from two domestic water wells in connection with this action.

4. Attached hereto as Exhibit B is a true and correct copy of an email from TestAmerica including an electronic copy of the Exhibit A.

5. Based on my usual practices, my recollection and a review of communications with TestAmerica, see Exs. A and B, I spoke with (b) (6) in person on or about November 17, 2010 in connection with EPA's receipt of the sampling results. I visited (b) (6) home shortly after receiving the sampling results from TestAmerica, and I apprised him of EPA's receipt of the sampling results, communicated a "layman's version" of the results to him, and provided him with a paper copy of the results. During this visit, I told (b) (6) that the sampling results raised concerns regarding water quality and potential explosion and advised (b) (6) against using the water source. Because (b) (6) did not request additional information or have questions at that time, no formal record of communication or other notation was created.

6. Based on my usual practices, my recollection and a review of communications with TestAmerica, see Exs. A and B, I attempted to contact (b) (6) on or about November 19 or 22, 2010 in connection with EPA's receipt of the sampling results. Shortly after receiving the sampling results from TestAmerica, I left a voicemail for (b) (6) and apprised him of EPA's receipt of the sampling results. When (b) (6) returned my call, I communicated a "layman's version" of the results to him. During this call I told (b) (6) that the sampling results raised concerns

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regarding water quality and potential for explosion due a nearly 60 fold increase in methane content since the last test two months ago, and advised (b) (6) that he may wish to discontinue using the water source, particularly if the methane content continues to increase at the same rate. Because (b) (6) did not request additional information or copies of the sampling results at that time, no formal record of communication or other notation was created.

7. Attached hereto as Exhibit C is a true and correct copy of an electronic mail to (b) (6) through which I provided (b) (6) with the sampling results referenced above.

8. During the course of conducting official business on behalf of EPA, it is my usual practice to create handwritten notes; however, on occasion, I may make a type-written Record of Communication to memorialize important conversations, including voice mail.

9. Attached hereto as Exhibit D is a true and correct copy of one page of my handwritten notes recorded in connection with this action.

10. Based on a review of my notes, see Ex. D, I spoke with Mr. Deunis Coleman, co-founder of Isotech Laboratories, Inc., on November 19, 2010. Mr. Coleman said that the isotopic

signatures of the samples from (b) (6) water well (Domestic Well) and the (b) (6) I-H gas well being as close as they are indicates that I) both are thermogenic in origin and 2) that they are likely to be from the same source, given the proximity of the production well and the water well. Mr. Coleman stated that, to be certain, one must evaluate the potential for other sources that would be thermogenic in origin and evaluate the geology or structure that would store or transmit the gas from the origin to the Trinity Aquifer.

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11. Based on a review of my notes, see Ex. D, I spoke with Mr. Steve Pelphrey, Lab Manager at Isotech Laboratories, Inc., on November 23, 2010. Mr. Pelphrey said that the samples from (b) (6) water well and the Butler 1-H gas well indicate that both gases are very wet gases with ethane, and that the ethane/propane ratio and the propane/butane ratio are very similar. Mr. Pelphrey also explained that the methane fraction of the gas is a good indicator because methane is the largest fraction and the methane migrates more readily and would be expected to be a higher fraction in the water well sample than the source. Mr. Pelphrey indicated that some oxygen and nitrogen were likely introduced during sampling of the Butler Well, which would affect the percentages and the BTU value; however, this would not affect the isotopic signature of the methane. Mr. Pelphrey also said that the (b) (6) well might be a good subject for isotope testing.

12. During the course of conducting official business on behalf of EPA, I occasionally visit sites of potential or actual contamination and meet with affected persons. It is my usual practice to maintain a "Field Activity Log" for these visits.

13. Attached hereto as Exhibit E is a true and correct copy of a Field Activity Log prepared on August 26, 2010, documenting a site visit to (b) (6) property, during which time I spoke with (b) (6).

14. Based upon my personal recollection and a review of the Field Activity Log, see Ex. E, I visited the (b) (6) property on August 26, 2010. During this visit, (b) (6) showed me his water well and opened the valve on the tubing-casing at the wellhead, with obvious vapors emanating from the wellhead. (b) (6) offered to ignite the end of hose attached to the valve; however, EPA declined, and (b) (6) showed me a video he recorded on his iPhone showing flames shooting three to four feet from the end of the hose he previously

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offered to ignite. (b) (6) then invited me inside, where he filled a drinking glass with water from an upstairs tap. The water clearly effervesced and did not have a strong odor. (b) (6) indicated that he first noticed the bubbling around Christmas of the prior year 2009. He also indicated that in July of 2010, he began experience problems pumping water, which a well service company told him was due to gas locking resulting from the large volume of gas entering the wellbore. (b) (6) indicated that he had contracted for water samples to be analyzed, but the analysis was not yet complete. (b) (6)

(b) (6) also stated that air testing was performed in his upstairs bathroom and at the wellhead, and some samples exceeded TCEQ standards.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: January 12, 2011

Dallas, Texas

CHRIS LISTER

Administration Workpaper

Prepared by: Genevieve Soule 10/22/2012

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: B-3-N

Assignment Guide Name: Field Work

Origination Doclink: [Notes Link](#)

Subject: [r1] Avi Garbow (OGC) Interview

Subsection:

Prepared, date	Genevieve Soule, October 30, 2012
Reviewed by, date	Johnny Ross, November 13, 2012
Reviewed by	K. Butler, 12/14/12, Notes Link , approved on 1/31/12

Title: Avi Garbow, Deputy General Counsel Interview

Purpose: The team met with the Deputy General Counsel for EPA who was involved with the Range Resources 1431 order withdrawal in order to answer our objective to determine if EPA Region 6's issuance, implementation, and withdrawal of the emergency order under the Section 1431 of the Safe Drinking Water Act met all requirements of the Act. Information from this interview will also aid the team in answering our sub-objectives:

1. Determine if the region's 1431 actions for Range Resource were compatible to other 1431 actions for other violators.
2. Determine the applicability of the Information Quality Act to Region 6's press release concerning its 1431 actions.
3. Determine if the region's interaction with State official (Texas Railroad Commission (TRRC), Texas Commission on Environmental Quality (TCEQ), EPA headquarters, and other stakeholders was appropriate and in accordance with Section 1431 guidelines.
4. Address/evaluate and report on each of the eight items enumerated in EPW's letter dated June 19, 2012.

Scope: Genevieve contacted Mr. Garbow through email on 10/9/12 to schedule an interview. Mr. Garbow responded on the same day that he would be available on 10/18/12 at 3p and to coordinate with Shanita Loving to schedule the meeting. Ms. Loving contacted Genevieve to indicate that 4:30p would be a better time and sent out an invitation for this date/time.

Source:Participants

Avi Garbow (AG), Deputy General Counsel, US EPA (202-564-1917)

Johnny Ross (JR), OIG Team Lead/Program Analyst (404-562-9863)

Genevieve Soule (GS), OIG Program Analyst (202-566-1171)

Date/Time/Location

October 18, 2012, 4:30pm EST

4020 A, Ariel Rios North

Conclusion:

This interview pertained mainly to our overall objective. Mr. Garbow stated that although he was not a part of the issuance of the original order, he thought that there was no doubt that they did the correct thing in issuing the order. In terms of the withdrawal, he thought that perhaps additional evidence that was brought to light after the initial order could have been one of the reasons that they withdrew the order. If a judge were to only consider the original information, it might have been a different story, but they look at everything. He stated that the decision to withdraw the order was probably made in OECA, but ultimately it would have had to have been Al Armendariz that made the decision because the order was issued in Region 6. He believed that there had to have been some coordination with DOJ in the decision, and that the terms of the letter from Range Resources must have been binding in some way, otherwise DOJ wouldn't have withdrawn their enforcement case. Mr. Garbow was unable to give a definitive answer as to why the order was withdrawn or who made the decision. He was also not able to definitely say how the discussion of withdrawing the order came to be (i.e. if EPA approached Range Resources or vice versa).

Details:

JR gave an introduction to the project.

JR - What was your role in the issuance of the 1431 order?

AG - I had nothing to do with the issuance of the order. I don't recall exactly when it was issued, there was clearly some period of time afterward when I still had nothing to do with it. I had some involvement with OECA in options to resolve the order.

Not sure what these questions are doing here:

~~Do you believe that Region 6 had the necessary evidence for the Imminent and Substantial Endangerment finding?~~

~~Do you think that they sufficiently coordinated with the state as is necessary in the 1431 policy?~~
(KB, 12/14/12)

JR - What was your role in the decision to withdraw the 1431 order? Who else was involved with this decision?

AG - I was involved in some of the negotiations with Range Resources, even before Steve Chester was here. I had a meeting with Adam Kushner when he was still here, and David Poole and John Riley (outside counsel) with Range Resources. That was my first engagement with them, it was a trip to Pittsburgh. There was, generally describing, some general discussion at that point about ways to resolve the dispute.

JR – There seems to be a gap between DOJ litigating and the decision to withdrawal.

AG – I'm not sure that I understand.

JR – We brought on DOJ to enforce the order, and then at some point they are no longer enforcing it because EPA negotiated with Range Resources and withdrew.

AG – There was no ability or attempt to resolve the issue without the involvement or approval of DOJ. A resolution would have to have included some resolution of the court case with DOJ. I know that there was an Assistant US Attorney from Pittsburgh in the meeting. That was probably not because of the Region 6 issue, but because of the Region 3 issue about getting access to Range sites in Region 3. But, I know that folks at DOJ were at some point involved. The only person that I spoke with was Ben Fisherow - he's a manager over there.

JR – So, your negotiating effort was unilateral with the case or was that case even considered?

AG – My recollection, if you have multiple components of a problem, the best effort is to resolve as many of them as possible. We were looking to how to address the 1431 order we issued and also the enforcement piece. At least in my mind, it all kind of fit together.

JR – At some point in time, someone made the decision to withdraw the order. I'm not seeing how this decision was made? Who made it?

AG – I'm assuming Al Armendariz did it. I think that it has to be from those that issued it – I assume that he had to make that decision. If part of the question was how did you even get to discussing it, my recollection was that it emerged as a solution to the bigger issue of risks associated with litigating, the strength of the evidence today versus when it first happened. I don't think there were discussions about people second guessing the issuance of the order then, I came in and we were looking at the landscape of it at the time. My recollection was that after the Region 6 issued the order, the Texas Railroad Commission (TRRC) had a hearing and had findings contrary to the findings in the order. So while nobody questioned the original order, I think that was a feature of new information that was being considered.

JR – Who initiated the negotiations?

AG – I don't know who first picked up the phone, I think that Range 6 came to EPA and met with Bob Sussman or someone else and expressed an interest in discussing a range of different issues – they have a lot of presence in Region 3. The Agency is looking at the whole oil and gas

sector, and Range plays a big role in that, and wanted to have a better relationship with the Agency because of this. So it emerged in that way somehow.

JR – Who would know that?

AG – I believe that it was all discussed, weighing the strengths and weaknesses of the case, I suspect that this was all a means to globally resolve this. I don't think that it would be correct to say that a decision was made to withdraw the order and then negotiations followed that. It would have been one and the same.

JR – Who would have been the person that reached out to them, or that they reached out to?

AG – I don't know who the first person was. I was definitely involved early on. I think that this was in response to Range coming to the Agency and expressing an interest in talking to them.

GS - Are there any legal criteria for withdrawing a 1431 order (or any order)?

AG – I don't know. I assume that there has to be a record of every agency decision and why they decided to do it. So, I would look at what we did when we did this. I'm not aware of any statutory authority that says to withdraw it in this fashion.

JR – In the negotiation with Range, they were required to do some things (they sent a letter).

AG – I vaguely remember this.

JR – Are you familiar with the testing requirements?

AG – Vaguely. Many of those things were not things that I'm not that familiar with. I don't know how we came to those specifics. I am familiar with one of the things, that the Agency was interested in more data about the extent to which there might have been any contamination or migration of the pollution. So that would have been why that was included in that settlement.

JR – Is there something written down?

AG – I would guess so.

JR – Were you the only one working on this?

AG – No. Steve Chester was the one that was doing most of this. I imagine that the folks in OECA would have been working closely with the folks in the Region and DOJ. I don't think that we had people in my office, staff, that were working on this that much.

JR – What was your specific role?

AG – I was there to see what the options were to resolve the case. It might have been that there was no option. This was a case where I think there was an understanding of the basis of the

emergency order that was issued. But stepping away from the lens of the region, I could see if there were other ways to resolve it.

JR – Who do you take this to to make a decision?

AG – I report to Scott Fulton. This was not an OGC decision though. I think the decision makers were primarily in OECA and Region 6. I worked with Steve, and I'm not the decision maker for those types of cases. I presume that Cynthia was involved. I don't know if they had conversations with Al. I don't recall personally ever hearing from the Region, "what's going on here?"

JR - Do you believe that the Agency would have been successful in the case if they had continued litigation? We heard from a lot of staff level folks that they thought that the order should not have been withdrawn.

AG – My feeling on that was that I understand why some people would feel that way. My belief is that there is a difference between the decision to issue an order in the beginning and the decision to continue on with it later on. I think that you can have sufficient information to issue it. These are emergency orders, it's preventative, you aren't supposed to wait to act you are supposed to do something beforehand. I think that there is a case where an Agency takes action appropriately, but then finds more information later on and it's a different picture. I don't think anyone questioned the original order, I just see what people lay in front of me a year later and I understand what goes in front of a judge. If they just looked at the information that EPA had a year ago, ok, but that's not what they do. They look at other things so you have to think about how something looks in a court of law now as opposed to when the order was issued. So I understand the enforcement folks feeling that way, but you have to think about how someone perceives it today. I don't think that the Agency just walked away in the sense that they just withdrew the order.

GS – Were (b) (6) and his well considered?

AG – I'm sure that it was. I don't know whether there had to be consideration of whether the particular well owner was still at the same risk as he was when they filed the initial order, so I imagine that they would have had to have felt that those risks had dissipated, but I don't know.

JR – Looking at the litigation and all of the evidence – do you think that DOJ would have been successful in enforcing the order?

AG – I don't know. I didn't do any first hand analysis. If I were trying this case, I would have wanted to look at all of the reports from all of the sides and seen where the holes were. I don't know who would have won. I suspect that neither side thought that they would for sure.

GS – Does EPA have the legal authority to make them do the things that they said they were going to do in their letter responding to the withdrawal of the order?

AG – I would think that there has to be something binding. If DOJ was going to have it affect a current case, there would have to be something stronger than just a vague promise to do it. I'm not sure what the final agreement was.

150 F.3d 389, 47 ERC 1071, 28 Env'tl. L. Rep. 21,575
(Cite as: 150 F.3d 389)

the water. See 42 U.S.C.A. § 300g-1 (West 1991 & Supp.1998).

(b) (5)

[n]otwithstanding any other provision of this subchapter, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

42 U.S.C.A. § 300i(a).

Thus, EPA may exercise its emergency powers

(b) (5)

powers under this provision are "intended to override *any* limitations upon the Administrator's authority found elsewhere" in the Act. *Id.* (emphasis added).

EPA may issue any order "as may be necessary to protect the health of persons who are or may be users" of a public drinking water system. 42 U.S.C.A. § 300i(a). "Such orders may be issued to obtain relevant information about impending or actual emergencies, to require the issuance of notice so as to alert the public to a hazard, to prevent a hazardous condition from materializing, to treat or reduce hazardous situations ... or to provide alternative safe water supply sources in the event any

(b) (5)

[2] A court must uphold any EPA action taken pursuant to the Act unless the action was "arbitrary,

Administration Workpaper

Prepared by Johnny Ross 11/15/2012

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: B-3-P

Assignment Guide Name: Field Work

Origination Doclink: [Notes Link](#)

Subject: [r1] Interview DOJ

Subsection:

Prepared, date	Genevieve Soule, November 23, 2012 (added documents on 12/29/12)
Reviewed by, date	K. Butler, 1/31/13, reviewed and approved.
Reviewed by, date	Johnny Ross, January 11, 2013

Title: Department of Justice Interview

Purpose: The team met with three individuals from the DOJ, with one individual being the primary interviewee, who were involved with the case to enforce the 1431 order against Range Resources. This meeting will help the team with its overall objective: determine if EPA Region 6's issuance, implementation, and withdrawal of the emergency order under the Section 1431 of the Safe Drinking Water Act met all requirements of the Act. Information from this interview will also aid the team in answering our sub-objectives:

1. Determine if the region's 1431 actions for Range Resource were compatible to other 1431 actions for other violators.
2. Determine the applicability of the Information Quality Act to Region 6's press release concerning its 1431 actions.
3. Determine if the region's interaction with State official (Texas Railroad Commission (TRRC), Texas Commission on Environmental Quality (TCEQ), EPA headquarters, and other stakeholders was appropriate and in accordance with Section 1431 guidelines.
4. Address/evaluate and report on each of the eight items enumerated in EPW's letter dated June 19, 2012.

Scope: In order to address our objectives, the team determined that it needed to speak with as many stakeholders as possible. One of these stakeholders is the Department of Justice (DOJ).

Genevieve Soule contacted DOJ through their audit liaison, Richard Theis, on October 9, 2012 to request a meeting with those at DOJ that were involved in the Range Resources 1431 Order enforcement case. The following emails document the coordination of these meetings. In order to fully accommodate our request, Mr. Theis suggested that we first meet with a senior member of the Environmental and Natural Resources Division to talk further about what we were looking to get out of our request. That meeting took place on October 25, 2012. After that meeting, the ENRD senior leadership determined that the best person for us to speak with was Ben Fisherow, Chief of the environmental enforcement division within ENRD, who was involved with the case. This meeting took place on November 8, 2012.

Source:

Participants

Ben Fisherow, Chief, Environmental Enforcement Division, Department of Justice
Johnny Ross (JR), Team Lead/Program Analyst (404-562-9863)
Genevieve Soule (GS), Program Analyst (202-566-1171)

Date, Time and Location:

November 8, 2012, 3:00pm EST
Department of Justice HQ Building
Washington, DC

Document provided during interview -



DOJ document.pdf

Conclusion: Based on the answers provided by Mr. Fisherow, the author has drawn the following conclusion about DOJ's role in the 1431 Order. The DOJ was involved in the litigation to enforce the 1431 Order that the EPA issued against Range Resources. DOJ made the decision to take the case because they felt that they could win. Additionally, DOJ believed that EPA had enough evidence in the case, and did not believe that any additional evidence was necessary. DOJ was not directly involved in withdrawing the order, they dropped the case when the order was withdrawn since there was nothing left to enforce. DOJ stated that there was no settlement involved in them dropping the case. Any agreement between EPA and Range Resource was separate and not considered a settlement (and therefore not binding). DOJ also stated that, under SDWA 1431, it was entirely EPA's discretion to bring actions and to withdraw them.

Details:

BF - So, I will just start with giving answers to the questions that you provided, and then we can

go from there. **B**The first question that you asked was, " In your opinion, did EPA have sufficient evidence to proceed with the litigation and successfully enforce the 1431 order? Why or why not? If not, what additional evidence would they have needed?" My response would be, yes, they had sufficient evidence. We are litigators and we always understand that there is always another side and always a neutral decider. So, we look at everything that come in the door and we don't take cases that we don't expect to win. Our reputation is on the line. We don't bring

frivolous suits and the courts know that. We wouldn't have started it if we didn't think we could win. Also, consider the statute that we are working under - it is designed to protect people. There's also the opinion from Judge Friendly (a very well known judge) in the Trinity case

(document attached in the Sources section). **A** So, you have a statute that courts have said give EPA the authority to take action, and courts tend to give EPA deference. We looked at this referral in light of what we needed to do to win the case. It was pretty simple. We needed to prove that the order was issued, and that Range did not comply. From all of those perspectives, we thought that they [EPA] had the evidence.

BF - The second questions was, "Was DOJ staff involved in negotiating a settlement with Range Resources? If so, what was that involvement?" The first thing that I want to address here is the use of the word settlement. When we settle a case, that means that there is an agreement and the defendant agrees to do things to come into compliance and we agree to grant them repose. Sometimes, that involves compromise on both sides. This was not a settlement. We did not grant repose - so the case could be brought again. This was an agreed upon dismissal. We were somewhat involved. When EPA decided to withdraw the order, I informed Range Resources and as a consequence of them withdrawing the order, we had to drop the case (because there was nothing left to enforce). We drafted a stipulation of dismissal and sent it to them to be signed. That was our involvement in that.

GS - So, there is a letter from Range to EPA that outlines some things that they agree to do when EPA withdrew the case. This letter is not binding? It is just a letter?

BF - **That's correct, it is** not binding. That's a side thing that we were not involved with.

BF - The third question was, "Do you agree with EPA's decision to withdraw the 1431 order? Why or why not?" We don't have an opinion on the withdrawal. There's nothing in the law that says they have to take an action to begin with, or withdraw an order. It's entirely their discretion.

BF - The fourth question that you asked was, "Did DOJ participate or otherwise get involved in EPA's decision to withdraw the emergency order?" This decision was on that they decided to take. **(b) (5)**

BF - Your final questions was, "To your knowledge, is there any legal criteria for withdrawing a 1431 order?" No, there is no criteria. It is entirely their discretion.

JR - So, just to reaffirm, did you think that EPA needed any additional evidence in this case?

BF - We didn't think so, we thought that there was enough.

JR - Since you dismissed the case without prejudice, you said that they could bring the case again?

BF - Well, technically yes, but there is no more order left to enforce. So, really, there is no way we could open it back up again - they would have to issue a new order.

Administration Workpaper

Prepared by Johnny Ross 11/15/2012

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: B-3-Q

Assignment Guide Name: Field Work

Origination Doclink: [Notes Link](#)

Subject: [r1] Interview Cynthia Giles

Subsection:

Prepared, date	Johnny Ross, November 15, 2012, April 22, 2013, completed May 29, 2013.
Reviewed by, date	K. Butler, reviewed on 12/1/12, 6/3/13, approved on 6/17/13.
Reviewed by, date	

OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Purpose: To interview OECA's key staff to evaluate EPA Region 6 issuance of a 1431 Emergency Order against Range Resources. This will assist in answering our overall objective of determining if EPA Region 6's issuance, implementation, and withdrawal of the emergency order under the Section 1431 of the Safe Drinking Water Act met all requirements of the Act.

Source: Personal testimony of Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, Washington D.C. 202 566-.

Scope: Our interview was intended to determine OECA's role in issuing and withdrawing the 1431 Emergency Order against Range Resources and to obtain records and documentation that show OECA's actions and agreement with Range Resources once the order was withdrawn.

Participants: Katie Butler, Project Manager, EPA/OIG/OPE; Johnny Ross, Team Leader, EPA/OIG/OPE; Cynthia Giles, Assistant Administrator OECA. The interview took place in Ms. Giles office in Washington D. C. on November 9, 2012.

Need a Conclusion section here.

Conclusion added. JRoss OK, KB, 6/17/13

Conclusion: Ms Giles stated that the emergency order was a good order and could eventually be enforced through the courts. However, she stated that, after consulting with her staff and DOJ, she decided to withdraw the emergency order because of (1) the court case had become more complicated and the expense of litigation to enforce the order would be too great, (2) Range agreed to do most of what was in the emergency order; and (3) the homeowner had an alternate water supply and was longer using the contaminated drinking water. When asked, she said that she did not think the imminent and substantial endangerment has been resolved. When asked, she stated that OECA had little written documentation of the negotiations or discussions with Range Resources. She stated that Range Resources sent a letter to OECA describing their commitments. She indicated that most communications were over the phone. See full interview below.

Interview: Ms. Butler started the interview by briefing Ms Giles on the OIG's assignment and its objective as stated in the Purpose above. She asked Ms Giles to describe OECA's actions in enforcing the emergency order in the courts and the agreement with Range Resources to withdraw the order.

Ms Giles stated that enforcement of the emergency order against Range Resources had been going on for quite some time. The legal proceedings included EPA's enforcement in the District

Court and Range's counter-action in the Appeals Court. **F** Based on briefings from her staff, it became apparent that the enforcement case would require a big expenditure of resources. Normally, this should not have happened; the district judge in the case didn't just enforcement the order as usual, but instead, wanted to review information from the agency and from Range Resources. (b) (5)

D She felt very confident in the enforcement case, but Range Resources had thrown a lot of dust in the air and the agency would need to knock it down. **G** The agency would have to get more experts to testify to knock down Range. What was a modest emergency order was becoming a giant more complicated piece of litigation.

A In addition, ORD's fracking study included some of Range's sites and Range indicated that they would not participate in the study as long as enforcement action was being pursued. This contributed to OECA's final decision to withdraw the order.

OECA decided to explore resolving the issues with Range. OECA staff, Steve Chester and Adam Cushner, and staff from the office of general counsel were involved in negotiations with Range. In March 2012, Steve came back with an imperfect agreement, but most things achieved. Range would do regular sampling and testing, isotopic fingerprinting of the data collected, and cooperate with ORD's fracking study. OECA would withdraw the emergency order. This was not a happy place to be. There was a lot of hand wringing because the emergency order was a good order. However, discussing it with Al (Region 6 Administrator) and Steve she decided the

agreement was better than litigating although not a perfect solution. In the agreement with Range, EPA would get most of what it wanted in the original emergency order.

When asked, she stated that OECA had little written documentation of the negotiations or discussions with Range Resources. She stated that Range Resources sent a letter to OECA describing their commitments. She indicated that things were happening really fast and most communications were over the phone.

Ms Giles went on to discuss what may have happened if the agency had continued with its enforcement effort. Range claimed that the contamination did not come from their gas wells. Range's position was that the contamination was caused by draw down of the water level which caused natural gas to enter into the groundwater. Range also pointed out that water wells nearby

had different readings of natural gas in the water. **C**OECA felt that to win the case the agency would have to get additional experts to testify on its behalf; and the case would take additional time and money. From a cost/benefit perspective pursuing the case was not the best option. Ms Giles decided, in close consultation with Al (Region 6 Administrator) and Steve (Deputy Assistant Administrator), to withdraw the order and reach an agreement with Range Resources.

Mr. Ross asked if the imminent and substantial endangerment had been resolved at the time of the withdrawal. Ms. Giles stated no. She said that the court was not looking at that. That could

have been in play, but that would have required additional testing. **B**She stated that the affected residents had an alternative water supply. Had they not had access to a water supply, things may have been different. The residents had installed gas monitors in the home so there was no immediate danger **and they weren't using** the water. However, a major point of contention was EPA really wanted Range to sample the affected resident's well. Based on the agreement with Range, the company will do additional sampling in the area. If there was a plume, they would have to do something. Region 6 is looking at that.

Ms Giles stated that hydrogeology is very complex. It is tough to figure out sources of contamination. There may be naturally occurring contamination. The company may not be adding contamination, but creating the pathway. In the court, who has burden of proof is the question. This case went from Range Resources having the burden of proof to the government

having the burden of proof. **H**This is one of the reason we thought the ORD study was a key thing EPA was doing and we needed to support the national study—Range was making it clear that EPA would not be allowed on their sites.

EMs Giles reiterated that the District court was supposed to just look at the order to see that an ISE existed; we thought this was a home run (successful case). But once in trial and having to prove elements of the Safe Drinking Water Act this became an enormous undertaking that would require additional testing and hiring additional experts. This type of trial would require years of discovery and cost hundreds of thousands of dollars.

Administration Workpaper

Prepared by Johnny Ross 11/15/2012

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: B-3-R

Assignment Guide Name: Field Work

Origination Doclink: [Notes Link](#)

Subject: [r1] Interview Al Armendariz

Subsection:

Prepared, date	Johnny Ross, April 23, 2013, 6/13/13.
Reviewed by, date	K. Butler, reviewed and approved on 6/17/13 with minor PM adjustments.
Reviewed by, date	

OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Purpose: To interview Region 6 key staff to evaluate EPA Region 6 issuance of a 1431 Emergency Order against Range Resources. This will assist in answering our overall objective of determining if EPA Region 6's issuance, implementation, and withdrawal of the emergency order under the Section 1431 of the Safe Drinking Water Act met all requirements of the Act.

Source: Personal testimony of Al Armendariz , Former Regional Administrator, EPA Region 6.

Scope: Our interview was intended to obtain information concerning EPA's issuance and withdrawal of the 1431 Emergency Order against Range Resources and to obtain records and documentation that show OECA's actions and agreement with Range Resources once the order was withdrawn.

Participants: Katie Butler, Project Manager, EPA/OIG/OPE; Johnny Ross, Team Leader, EPA/OIG/OPE; Cynthia Giles, Assistant Administrator OECA. (<--she was not present.KB.) The interview took place in the lobby of the Crowne Plaza hotel, Austin TX on, November 28, 2012.

Interview: Mr. Ross introduced the team and briefed Mr. Armendariz on the assignment, the letter from the senators request, the review, and the status of the assignment thus far. He also discussed the OIG's fieldwork and reporting process. He asked Mr. Armendariz to tell his story of the issuance and withdrawal of the emergency order against Range Resources.

Mr. Armendariz stated that he first became aware of the emergency order about a week before issuance when John Blevins briefed him during a Monday-morning staff meeting. He didn't know anything about this before then, who the (b) (6) were, who Range Resources was, etc. John said they were ready to issue the order; however, he asked them to wait. He instructed John that he wanted a full briefing. He felt that this order was important because:

- Hydraulic Fracturing was a big issue
- He had done some technical work on Hydraulic Fracturing
- An emergency order would raise media attention

He felt they (John Blevins and staff) should tell EPA headquarters (OECA) because an emergency order would generate media interest. He had email discussions that week to more fully understand hydraulic fracturing was EPA issue nationally and there was an ongoing study through ORD, a scientific study in WY, and an amount of concern in R3 where there was new oil and gas drilling in PA for first time in a long time. Since the Region was saying that it was an emergency he knew they would get pushback from company. He then worked with headquarters to develop the order. There had only been one other 1431 order-a public water system contaminated with rodents/rats.

John had been out to the site long before he got involved in the case.

He reached out to Victor Carrillo, chairman at the railroad commission (RRC) to let him know of the pending emergency order. He had met Victor before so knew him a little. He advised Victor that his staff was recommending Region 6 take this action. He knew that staff had been in contact but wanted to make sure the RRC leadership knew what was going on. The RRC leadership (Victor) expressed an amount of skepticism. Armendariz said he knew there was already a fair amount of contention between EPA and RRC, but was glad they could still talk about these things. He understood they disagreed, but

(b) (5)
potential because staff was saying there was potential for loss of life (there was an ISE), and EPA needed to act immediately--not conduct a scientific study. So, Armendariz took the staff's opinion that there was a risk of explosion, fire, etc. The staff in Region 6 have more experience with oil and gas issues than most people in the agency. The team in Dallas has as much experience as anyone in the federal government with oil and gas issues. When they said this was an imminent endangerment case, Armendariz said he took it very seriously. In fact, he said he went to bed uneasy each night when EPA decided to delay taking action. He said he

would have felt awful if in the week they delayed this if something happened to the families. There are cases in the federal government when we don't take action and something bad happens. Armendariz let Victor know that Region 6 would proceed with issuing the order.

He stated that political staff rarely get involved in issuing orders or enforcement issues. He had a very reliable team in Region 6 that dealt with oil and gas issues.

Mr. Ross asked his opinion on the imminent endangerment now that the emergency order had been withdrawn. He stated that dealing with the contamination in the water well would now rest with the state and Range Resources under the Safe Drinking Water Act since EPA had withdrawn the order. Although the contamination is still there, the Agency has to prioritize—it can't fix every endangerment issue/case. This is a very complicated issue. Armendariz said he has a lot of sympathy for (b) (6) though to his knowledge he has never met or spoken with him. Armendariz said that our laws place responsibility for ensuring safe drinking water with the states. EPA has its oversight responsibilities, but responsibility does rest with the state. He said he places the principal blame with Range Resources and secondary blame on state agencies if the homeowner is not protected. He said that it may be that EPA still has a role. It has limited resources, and cannot engage in enforcement actions everywhere there is an endangerment or

everywhere it knows there are problems. **C** EPA made a decision that continuing to put agency resources into this case, in particular in the risk of getting bad case law and endangering the relationships we needed to have for the ORD study was not wise. He said EPA thought it would get an agreement with Range to continue getting data in the area, and they knew (b) (6) wasn't getting his drinking water from the well anymore. He said EPA knew it would require a lot of expert witnesses, a lot of lawyers, etc., and thought our resources were better put to getting an agreement with Range to do most of the things in the order. But, he emphasized that he is not unsympathetic to (b) (6). He said he is still concerned about it. Range could have spent money to run a water line to the house; instead the company has spent many times that on court cases. He thinks Range failed in its responsibilities and the state failed in its responsibility to protect the landowner.

Mr. Ross asked what attempts were made to discuss the case with Range Resources. He stated that coordination would have been below his level of management at John's level.

He stated that in preparation for litigation, his staff identified Dr. Jeffrey Thyne to give an independent expert opinion. Dr. Thyne stated that the match between the gases in the ground water and production well was the clearest he had ever seen.

There were meetings about wanting to settle the case outside of the courts with Range. Range initially wanted EPA to withdraw the order and would do nothing. This was not good. The eventual withdrawal of the order was not based on technical reasons. The order was withdrawn based on two things:

- **D** The risk of an adverse opinion from the judge. There was the possibility of a bad opinion creating bad case law.

- **B** National study by ORD. The study relied on industry to collect needed information for the study. The order under litigation would send a bad/negative signal to the industry overall.

In addressing the allegation that the press release was issued before the order, he stated the order was issued before the press release. **A** In terms of releasing information to environmental groups, he stated that he contacted a couple citizen or community environmental groups who had shown interest in oil and gas issues in Region 6. He contacted these groups well after the order had been issued.



April 4, 2012

Ms. Lisa P. Jackson
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Ariel Rios Building
Room 4000
Washington, DC 20460-0000

Dear Administrator Jackson:

Now that the pending litigation between Range Resources and the Agency has been dismissed, we wanted to write and express our appreciation to you for the leadership you demonstrated in making the determination to withdraw the emergency order issued against Range. On behalf of the approximately 800 employees of Range, we want to thank you for the fair and objective manner in which this situation was resolved. We also want to acknowledge you personally for having the conviction to lead the Agency to a fact-founded decision even in the face of the expected critical commentary about the Agency's action.

We are pleased that, with the matter of the emergency order resolved, Range is now able to cooperate with the Agency in providing access to study sites as part of the EPA's hydraulic fracturing study. On many occasions, you have emphasized the priority you place on objective and transparent scientific analysis. We also know as an engineer you understand the value of applying science and engineering to facts at hand. We look forward to working cooperatively with EPA on the study to develop additional data and science to help guide policy makers in the future.

We all agree that the safe and responsible development of our natural resources is integral to the security and wellbeing of our nation. Although we serve that goal in different ways, we believe an objective, fact-based, environmental regulatory framework coupled with a strong commitment from industry is imperative to the continued development of energy from oil and gas resources. We believe that the industry and the Agency should work in a cooperative way toward a goal of providing the American people the benefit of our domestic energy resources. If our domestic resources are prudently developed, we are convinced the United States has the opportunity to move toward our shared goals of energy independence, economic development and environmental protection positively impacting Americans for generations to come.

Sincerely,


Jeffrey L. Ventura
President & Chief Executive Officer


John H. Pinkerton
Executive Chairman

Administration Workpaper

Prepared by: Genevieve Soule 01/29/2013

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: B-3-S

Assignment Guide Name: Field Work

Origination Doclink: [Notes Link](#)

Subject: [r1] Status of Range Participation in HF Study

Subsection:

Prepared, date	Genevieve Soule, January 29, 2013 added information on June 6, 2013 added information on August 15, 2013
Reviewed by, date	K. Butler, 1/31/13, reviewed and approved. Minor PM changes.
Reviewed by, date	

Title: Status of Range's Participation in EPA's Hydraulic Fracturing Study

Purpose: . This information will aid the team in answering our sub-objectives:

1. Determine if the region's 1431 actions for Range Resource were compatible to other 1431 actions for other violators.
2. Determine the applicability of the Information Quality Act to Region 6's press release concerning its 1431 actions.
3. Determine if the region's interaction with State official (Texas Railroad Commission (TRRC), Texas Commission on Environmental Quality (TCEQ), EPA headquarters, and other stakeholders was appropriate and in accordance with Section 1431 guidelines.
4. Address/evaluate and report on each of the eight items enumerated in EPW's letter dated June 19, 2012.

Scope: In order to determine whether or not Range Resources was following through with the non-binding agreement that they participate in the hydraulic fracturing study when EPA dropped the emergency order, we sought to determine the status of their participation in the study. Genevieve originally contact Jeanne Briskon (identified through a webinar update on the progress of the study on January 4, 2013), and was referred to Bob Sussman in the

Administrator's Office for further information. Genevieve contacted Mr. Sussman by phone and email on January 28, 2013, and received an email response the same day.

Source:

1. A letter from Range Resources to Lisa Jackson (4/4/12) posted on Range's website: <http://www.rangeresources.com/rangeresources/files/0e/0e09af4c-5f65-473e-a406-402185270ac1.pdf> accessed 6/6/13



0e09af4c-5f65-473e-a406-402185270ac1.pdf

2. We received the following email from Bob Sussman (Senior Policy Counsel to the Administrator) on January 28, 2013.

3. During referencing of the draft report, Carolyn Hicks requested that we update the information to be able to give a more current update on the status of Ranges' participation. Bob Sussman has since left the Agency, and we were directed to Mary Hanley. The following is the email exchange(s)

RE: OIG assignment Re: Range Resources 1431 Order

From: Hauchman, Fred
Sent: Thursday, August 15, 2013 10:52 AM
To: Soule, Genevieve
Subject: RE: OIG assignment Re: Range Resources 1431 Order

Genevieve,

It's the former -- The status of Range's participation is still uncertain.
Fred

-----Original Message-----

From: Soule, Genevieve
Sent: Wednesday, August 14, 2013 4:16 PM
To: Hauchman, Fred
Subject: RE: OIG assignment Re: Range Resources 1431 Order

Fred,

Thank you for the response. I'm not sure if you saw the original email that I sent to Mary, but here is the response that I received from Bob Sussman back at the end of January:

"Range was originally one of two companies which had agreed to work with EPA on prospective case studies of drilling operations. The other company was Chesapeake. Discussions with both companies to define the terms and conditions of access to their sites have been extensive and complex. These issues were resolved with Chesapeake a few months ago and the only remaining task is to select a site for the study; we are hopeful a Chesapeake site will be selected soon. In the case of Range, we have not yet achieved closure on access and other conditions for the study. Discussions with Range are ongoing. We are hopeful

that an agreement will be reached but the outcome is uncertain at this time."

Is the statement here about the status of the Range Resources participation still accurate? Would you say the status of their participation in the study is still uncertain, or are you confident that you will agree on a site and they will participate? I'm in the office for the rest of the day (566-1171) and AWL tomorrow (b) (6) if you have any questions or would like any additional information.

Thanks again for the response -

Genevieve

Genevieve Borg Soule
Social Scientist

USEPA Office of Inspector General
Office of Program Evaluation: Water Programs
1200 Pennsylvania Avenue, NW
MC 2460T
Washington, DC 20460

Tel: (202) 566-1171 || Fax: (202) 566-2825 || Email: Soule.Genevieve@epa.gov

-----Original Message-----

From: Hauchman, Fred
Sent: Wednesday, August 14, 2013 12:32 PM
To: Soule, Genevieve
Cc: Hanley, Mary
Subject: RE: OIG assignment Re: Range Resources 1431 Order

Genevieve,

I am responding to your message below to Mary Hanley. Thanks for your patience.

The EPA's National Hydraulic Fracturing Study is being coordinated by my office. In short, we are continuing to work with Range Resources to identify a suitable site for the prospective case study, and we are still seeking additional prospective case study partners.

Best,

Fred S. Hauchman, Ph.D.
Director, Office of Science Policy
Office of Research and Development
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (8104R)
Washington, D.C. 20460
(202) 564-6705 - office
(202) 565-2911 - fax
hauchman.fred@epa.gov

Conclusion: {(Range Resources told the EPA that due to the withdrawal of the emergency order, they would cooperate with the Agency on allowing access to its hydraulic fracturing sites as part of the national study.) Source #1, PDF, highlighted text} {(However, Range Resources is not

actively participating in the hydraulic fracturing study at this time. Range and EPA are in ongoing discussions to reach an agreement on access and other conditions for the study. The outcome of these discussion is uncertain at this time.) [Source #2, first email, highlighted text Notes Link](#) } [OIG confirmed that this was still the status as of August 2013 \(Source #3, Emails with Fred Hauchman, highlighted Notes Link\)](#)

Details:

From the letter from Range Resources to Administrator Jackson:

We are pleased that, with the matter of the emergency order resolved, Range is now able to cooperate with the Agency in providing access to study sites as part of the EPA's hydraulic fracturing study. On many occasions, you have emphasized the priority you place on objective and transparent scientific analysis. We also know as an engineer you understand the value of applying science and engineering to facts at hand. We look forward to working cooperatively with EPA on the study to develop additional data and science to help guide policy makers in the future.

From the letter email from Bob Sussman to OIG:

Range was originally one of two companies which had agreed to work with EPA on prospective case studies of drilling operations. The other company was Chesapeake. Discussions with both companies to define the terms and conditions of access to their sites have been extensive and complex. These issues were resolved with Chesapeake a few months ago and the only remaining task is to select a site for the study; we are hopeful a Chesapeake site will be selected soon. In the case of Range, we have not yet achieved closure on access and other conditions for the study. Discussions with Range are ongoing. We are hopeful that an agreement will be reached but the outcome is uncertain at this time.

[From](#)

PRIVILEGED AND CONFIDENTIAL

**Follow-up to April 19, 2013 Meeting with OECA
Range Resources Investigation**

The Office of Enforcement and Compliance Assurance (OECA) appreciated the opportunity to meet on April 19 with the Office of Inspector General (OIG) on the investigation regarding the Range Resources matter. We appreciate your initial conclusion confirming what we have long said, that the Administrative Order EPA issued to Range was well grounded in the facts and the law.

As we discussed, our meeting, and prior conversations between enforcement representatives and OIG, involved some privileged and enforcement sensitive information that we understand OIG will withhold from publication. We also understand from the April 19 meeting that there will be an opportunity to review the draft report developed by OIG when that report is completed, and we appreciate having that opportunity. The purpose of this communication is to follow-up on three issues specifically addressed in our meeting on April 19.

Reasons for EPA's decision to resolve the matter. The discussion on April 19 between OIG and OECA included the reasons for withdrawal of the Agency's emergency order issued to Range Resources. As we discussed, EPA withdrew the order for the following principal reasons:

(1) The problem was less acute. Range did install explosivity monitors in two homes and, to the best of our knowledge, no explosivity levels were reached (the principal risk from elevated methane in the water) at either household. One of the households discontinued use of their well for drinking water, and the methane in other of the household's well was determined not to be related to Range.

(2) Litigation was dragging on. More than a year after the Order was issued there was pending litigation in both federal district court and federal appellate court with no end in sight. It appeared that the district court was going to conduct a full hearing on the enforcement matter, and not just enforce the Order based on the administrative record, likely leading to further delays and a lengthy trial involving extensive expert witness investigations and testimony.

(3) Meanwhile, investigation of potential health concerns was not being done pursuant to EPA's Order. The Order sought to have Range conduct testing of other drinking water wells in the area, so EPA could determine if the issues identified in the Order were isolated or part of a bigger drinking water problem. While we were litigating in court, this testing was not being done pursuant to EPA's Order, so EPA did not know if there was a larger issue here requiring attention. Getting this testing done was a high priority for EPA and resolving the matter was the fastest pathway to accomplishing that.

These were the main factors that led EPA to believe that we would best accomplish our protection job if we could resolve the litigation and get sampling done of the wells in the vicinity to find out how big a

problem we had in this area. It was a settlement of course, in which by definition neither side gets everything they want, but we thought the agreement advanced the ball further and faster than was likely under the dual litigation pathway we were on.

Situation on the ground today. In the past year, EPA has received three quarters of ground water sampling data for 20 wells in the area from Range Resources, submitted pursuant to a letter agreement signed in March 2012. The data submitted by Range appear to indicate that methane and other volatile organic compounds may not be present in drinking water wells at levels of concern in the areas of Parker County that were sampled. Only one sample at one well in late 2012 showed elevated levels of methane, and that well had previously the same year tested very low for methane. EPA Region 6 communicated with the Texas Railroad Commission about the sampling results at this well, and recommended that the Commission provide the well owner with the data and consider additional actions, as appropriate, to address the matter. EPA understands that a vent was installed on the well in January 2011, and an aerator was also installed on the well, actions that should address any explosivity risk should there be higher levels of methane at the well in the future.

The sampling program done by Range indicates that there is no widespread methane contamination issue in the area. Based on this information, EPA does not see a current need for EPA action.

Recommended next steps. At the meeting, OIG said it was considering a potential recommendation for EPA to conduct further sampling and analysis at the (b) drinking water wells. We thought it would be helpful to provide some relevant information to inform the OIG's thinking. First, there is no maximum contaminant level for methane in drinking water. The concern posed by methane is not from ingestion of methane dissolved in water, it is from the potential for methane in water to be released into the air inside the home and create an explosivity and inhalation risk. Venting the well and other measures can often reduce or eliminate these risks. EPA's understanding is that the two drinking water wells at the (b) property are not currently being used for drinking water. Second, methane, which occurs naturally in the underground environment, is not like other pollutants in groundwater. It does not move in a "plume" as some of the IG staff may have believed, so analogies to approaches that work in other contamination situations are not applicable here. Third, where methane is present in well water, it is a complex undertaking to determine definitively what the source of that methane is. A full characterization of contaminants in an aquifer is an extremely costly and complex scientific inquiry that may not ultimately yield a clear result as to origin and flow pathways. Because the sampling done to date in the area indicates that there is not a general contamination issue with the aquifer in the area of the wells that were the subject of the initial Order, there is not a good reason now to launch such a complex study.

Commented [A1]: Broader than what we re recommending.

Administration Workpaper

Prepared by Johnny Ross 05/21/2013

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: C-1-A

Assignment Guide Name: Reporting

Origination Doclink: [Notes Link](#)

Subject: [r1]Draft Report to AIG

Subsection:

Prepared by: J. Ross, completed 6/6/13

Reviewed by: [K. Butler](#), approved on 6/19/13

Title: AIG Review of Draft Report for Range Resources Congressional Request

Purpose: Per the OIG Policy 101, the Project Management Handbook, December 20, 2012 version, the team is documenting its coordination of the draft report with the AIG for Program Evaluation, Carolyn Copper.

Source: Emails and documents contained below.

Scope: The team submitted the document to the AIG for her approval on 2/2/13, and continued with suggested modifications to the draft until the AIG approved the draft to move forward on 6/6/13.

Conclusion:

The report was initially submitted to the AIG on February 2, 2013. The AIG approved the report to move to the next step in the reporting process (editing) on June 6, 2013.

Details:

From: Butler, Kathlene

To: Copper, Carolyn

Cc: Engelberg, Dan; Soule, Genevieve; Ross, Johnny

Subject: Congressional Request: Range Resources Draft for 02/12 Message Agreement Meeting

Date: Tuesday, February 05, 2013 1:17:49 PM

Attachments: [Draft Report Range 02052013.docx](#)

Hi, Carolyn,

Just what you were hoping for! Another draft report from us!

Attached, please find our draft report describing what we found in researching the Range Resources emergency order case. We look forward to meeting with you to discuss the details next Tuesday, if this is possible.

Thanks,

Katie



Draft Report Range 02052013.docx



Draft Report Range
02052013.do...

From: Copper, Carolyn
To: Engelberg, Dan; Butler, Kathlene; Ross, Johnny; Soule, Genevieve
Cc: Harris, Jeffrey
Subject: Range comments
Date: Monday, February 25, 2013 5:16:25 PM
Attachments: cc-Draft Report Range 02062013.docx

(b) (5)

p.s., -- PMH says we're supposed to invite the OCPA congressional/media liaison (Jeff Lagda) to message agreements for Congressionals. Was Jeff invited



cc-Draft Report Range 02062013.docx

From: Butler, Kathlene
To: Copper, Carolyn
Cc: Ross, Johnny; Engelberg, Dan; Soule, Genevieve; Harris, Jeffrey
Subject: Range Resources Discussion Document (and others) for Your Review
Date: Tuesday, March 05, 2013 4:03:00 PM
Attachments: Discussion Document Draft 030613.docx
crosswalk 030513.docx
BRIEFDraft Report Range 03052013.docx
EPW Letter2012_06_18_19_20_18.pdf
Inhofe Response - Range Resources in Parker County Texas.pdf
Region 6 Congressional Request Notification Memo to EPA.pdf

Hi, Carolyn,

Based on our meeting last week, we developed the attached discussion draft document for your review. [REDACTED]

(b) (5)

Third, I'm attaching the current draft report version. This includes revisions based on our meeting last week and responses to your comments. The crosswalk includes page numbers for your benefit—they should line up with the page numbers in this report version. (Although, with tracked changes, we have found that the page numbers may appear differently to different people.) Fourth, I'm attaching the senators' letter, the response Nancy and Eileen sent to one of the six requestors (Inhofe), and the notification memo we sent to EPA and used throughout our evaluation.

I think that is all for now! (b) (5)

[REDACTED] We're looking forward to providing you with more

details about that in the near future.

Katie



BRIEFDraft Report Range 03052013.docx



crosswalk 030513.docx

From: Copper, Carolyn

To: Engelberg, Dan; Harris, Jeffrey

Cc: Butler, Kathlene; Ross, Johnny; Soule, Genevieve

Subject: RE: letter report

Date: Wednesday, March 20, 2013 4:59:29 PM

(b) (5)

A large, solid black rectangular redaction box covering the majority of the email body content.

From: Engelberg, Dan

Sent: Wednesday, March 20, 2013 4:39 PM

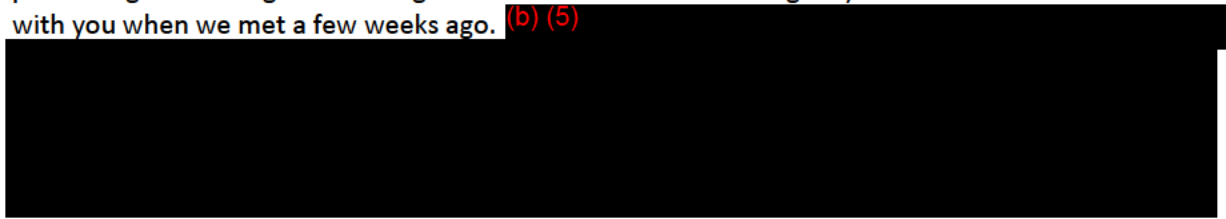
To: Copper, Carolyn; Harris, Jeffrey

Cc: Butler, Kathlene; Ross, Johnny; Soule, Genevieve

Subject: FW: letter report

Carolyn/Jeff,

While we're waiting on OECA to respond to the discussion document, we've been working on presenting our findings concerning EPA's withdrawal of the emergency order that we discussed with you when we met a few weeks ago. (b) (5)

A solid black rectangular redaction box covering the bottom portion of the email body.

[REDACTED] The following questions were part of the request:

- (1) To what extent did Region 6, Headquarters, and their personnel follow that protocol in issuing and subsequently withdrawing this order?
- (2) What evidence did EPA obtain that led to issuance of the order and its subsequent withdrawal?
- (3) What sources did EPA rely on for this evidence?

(b) (5)

[REDACTED]

Dan

From: Butler, Kathlene
To: Engelberg, Dan; Copper, Carolyn
Subject: Range report update
Date: Friday, May 03, 2013 9:01:00 AM
Attachments: BRIEFDraft Report Range 050213.docx

Hi, Carolyn and Dan,

I have finished responding to 95% of Dan's comments at this time. There are a couple of outstanding questions that I would like to discuss with Johnny, (b) (6)

[REDACTED] He should be in on Monday. I am hoping that we can wrap up these final points at that time. However, I am sending it along now, just in case Carolyn needs some good reading material this afternoon. I will send the updated version as soon as Johnny and I can verify the few remaining points—hopefully on Monday.

I'm glad to report that the F-K score is already at 14! Johnny should teach our writing training course...

FYI: I am in transit for most of today.

Hope you both have relaxing weekends.

Katie



BRIEFDraft Report
Range 050213...

From: Copper, Carolyn
To: Butler, Kathlene; Engelberg, Dan
Subject: RE: Range report update
Date: Sunday, May 05, 2013 10:09:01 PM
Attachments: cc-RangeDRAFT.docx

Katie -- The report still reads well and it is improved from where we started. I had some time today to take a look at have some additional comments. Please see attached. I will want to look at this one more time once all Dan's comments are addressed and you can address the comments attached.

This has been a really educational and informative project. I'm really glad I've had a chance to be involved. Thanks -- Carolyn



cc-RangeDRAFT.docx

From: Butler, Kathlene
Sent: Friday, May 03, 2013 9:02 AM
To: Engelberg, Dan; Copper, Carolyn
Subject: Range report update

Hi, Carolyn and Dan,

I have finished responding to 95% of Dan's comments at this time. There are a couple of outstanding questions that I would like to discuss with Johnny, (b) (6)

He should be in on Monday. I am hoping that we can wrap up these final points at that time. However, I am sending it along now, just in case Carolyn needs some good reading material this afternoon. I will send the updated version as soon as Johnny and I can verify the few remaining points—hopefully on Monday.

I'm glad to report that the F-K score is already at 14! Johnny should teach our writing training course...

FYI: I am in transit for most of today.

Hope you both have relaxing weekends.

Katie

From: Copper, Carolyn
To: Butler, Kathlene; Engelberg, Dan
Subject: FW: Follow Up Comment
Date: Thursday, May 16, 2013 11:26:48 AM
Attachments: Range IG Follow-up 5 14 13.docx

Fyi. I'll take a look at the RR draft as soon as I can (possibly over the weekend

—(b) (5)

From: Chester, Steven
Sent: Thursday, May 16, 2013 9:26 AM
To: Sheehan, Charles
Cc: Copper, Carolyn
Subject: Follow Up Comment

Good morning Chuck,

Per our conversation, I am sending a follow-up paper on the meeting OECA and Region 6 had with the Office of Inspector General regarding the Range Resources matter. We appreciated the opportunity to meet with OIG on April 19, and appreciate this opportunity to submit a follow-up paper.

Please let me know if we can provide any additional information.

Regards,
Steve



OECA Range IG Follow-up 5 14 13.docx

From: Butler, Kathlene
To: Copper, Carolyn
Cc: Harris, Jeffrey; Engelberg, Dan; Ross, Johnny; Soule, Genevieve
Subject: Revised Draft Range Report AND New Discussion Document
Date: Thursday, May 16, 2013 11:09:00 AM
Attachments: 051613-RangeDRAFT.docx
rangediscussion document2.docx

Hi, Carolyn,

We have responded to your comments and made changes in the draft report attached. Dan has approved and we are sending it back to you.

(b) (5)

We look forward to hearing back from you on these documents, and we're available to talk about any changes or other questions you may have.



051613-RangeDRAFT.docx



rangediscussion document2.docx...

Thanks,
Katie (& Team)

From: Copper, Carolyn
To: Butler, Kathlene
Cc: Harris, Jeffrey; Engelberg, Dan; Ross, Johnny; Soule, Genevieve
Subject: RE: Revised Draft Range Report AND New Discussion Document
Date: Saturday, May 18, 2013 4:09:33 PM
Attachments: cc-051613-RangeDRAFT[1].docx

Thanks Katie and team for your diligence on this important review.

(b) (5)

(b) (5)

Please plan to get a revised draft to me by the 24th. I have some comments in the attached.

Thanks -- Carolyn



cc-051613-RangeDRAFT[1].docx

From: Butler, Kathlene

Sent: Thursday, May 16, 2013 11:10 AM

Team Response:



052213Response to CC Comments.docx

From: Engelberg, Dan

To: Copper, Carolyn; Harris, Jeffrey

Cc: Butler, Kathlene; Ross, Johnny; Soule, Genevieve

Subject: FW: Revised Draft Range Report AND New Discussion Document

Date: Friday, May 31, 2013 9:30:41 AM

Attachments: cc-051613-RangeDRAFT[1].docx

Range draft 052913 --DE_KB.docx

AIG comments and team response to Range report 053013.docx

Carolyn and Jeff,

(b) (5)

Three documents are attached: your comments (cc-051613 RangeDRAFT), our response to your comments (AIG comments and team response), and our new version (Range draft 052913)

Let me know what you think,

Dan



AIG comments and team response to Range report 053013.docx
DE_KB.docx



Range draft 052913 --

From: Copper, Carolyn

Sent: Saturday, May 18, 2013 4:10 PM

To: Butler, Kathlene

Cc: Harris, Jeffrey; Engelberg, Dan; Ross, Johnny; Soule, Genevieve

Subject: RE: Revised Draft Range Report AND New Discussion Document

Thanks Katie and team for your diligence on this important review.

(b) (5)

From: Copper, Carolyn

To: Engelberg, Dan

Cc: Butler, Kathlene; Ross, Johnny; Soule, Genevieve; Harris, Jeffrey

Subject: RE: Revised Draft Range Report

Date: Monday, June 03, 2013 11:12:02 AM

Attachments: cc-Range draft June 3, 2013.docx

Importance: High

Thanks Dan and team – I think we’re in the final stretch of our Triple Crown race (the first crown being OPE; second crown being all-OIG; and third crown being the Agency.) J

Good work and I appreciate the thought and focus that’s clearly gone into this report.

The attached has my current set of comments and edits. Using the last complete/marked-up version you sent, I accepted all your changes and deleted the comments –so the attached reflects new comments and/or changes to what I understand was the most recent draft.

Dan, Katie and Team – please make this report your priority. We’re coming

down to the wire in terms of your ability to issue this FY. We got an inquiry last week from the Hill on this report –they’re expecting it ‘late summer’.



~ Carolyn cc-Range draft June 3, 2013.docx

From: Engelberg, Dan

Sent: Friday, May 31, 2013 9:31 AM

To: Copper, Carolyn; Harris, Jeffrey
Cc: Butler, Kathlene; Ross, Johnny; Soule, Genevieve
Subject: FW: Revised Draft Range Report AND New Discussion Document
Carolyn and Jeff,


(b) (5)



From: Engelberg, Dan
To: Copper, Carolyn
Cc: Butler, Kathlene; Ross, Johnny; Soule, Genevieve; Harris, Jeffrey
Subject: RE: Revised Draft Range Report
Date: Tuesday, June 04, 2013 12:05:48 PM
Attachments: [060413 Range Draft.docx](#)

(b) (5)



 Dan 060413 Range Draft.docx

From: Copper, Carolyn
Sent: Monday, June 03, 2013 11:12 AM
To: Engelberg, Dan
Cc: Butler, Kathlene; Ross, Johnny; Soule, Genevieve; Harris, Jeffrey
Subject: RE: Revised Draft Range Report
Importance: High

Thanks Dan and team – I think we're in the final stretch of our Triple Crown race (the first crown being OPE; second crown being all-OIG; and third crown

being the Agency.) J

Good work and I appreciate the thought and focus that's clearly gone into this

From: Copper, Carolyn

To: Engelberg, Dan

Cc: Butler, Kathlene; Ross, Johnny; Soule, Genevieve; Harris, Jeffrey

Subject: RE: Revised Draft Range Report

Date: Thursday, June 06, 2013 10:46:41 AM

(b) (5)



Thanks ~ Carolyn

From: Engelberg, Dan

Sent: Tuesday, June 04, 2013 12:06 PM

To: Copper, Carolyn

Cc: Butler, Kathlene; Ross, Johnny; Soule, Genevieve; Harris, Jeffrey

Subject: RE: Revised Draft Range Report

(b) (5)



Administration Workpaper

Prepared by Johnny Ross 03/15/2013

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: C-2

Assignment Guide Name: Reporting

Origination Doclink: [Notes Link](#)

Subject: [r1] Discussion Document to AIG

Subsection:

Prepared by: J. Ross, 5/21/13

Reviewed by: K. Butler, approved on 6/19/13

OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Purpose: To record coordination with AIG for review of the discussion document prepared for the Agency.

Source: The discussion document is an original OIG document.

Scope: The discussion document provides an overview of the issues contained in the draft report.

Conclusion: On Thursday, March 5th, the evaluation team provided the AIG a draft copy of the discussion document for review and approval (attached below). See page 2. On March 6th the AIG responded with one minor change. The team made the change and forwarded the document to OIG counsel for a legal sufficiency review (page 3 below). See work paper C-3.

Discussion Document to AIG

Discussion Document from AIG

Document

Document

Page 2

From: Butler, Kathlene
Sent: Thursday, March 07, 2013 8:26 AM
To: Engelberg, Dan; Soule, Genevieve; Ross, Johnny
Subject: RE: Range Resources Discussion Document (and others) for Your Review

(b) (5)



From: Engelberg, Dan
Sent: Wednesday, March 06, 2013 8:58 PM
To: Butler, Kathlene; Soule, Genevieve; Ross, Johnny
Subject: FW: Range Resources Discussion Document (and others) for Your Review

Are you fine with this change (I am):

(b) (5)



From: Copper, Carolyn
Sent: Wednesday, March 06, 2013 8:53 PM
To: Butler, Kathlene
Cc: Ross, Johnny; Engelberg, Dan; Soule, Genevieve; Harris, Jeffrey
Subject: RE: Range Resources Discussion Document (and others) for Your Review

(b) (5)



Thanks -- Carolyn

From: Butler, Kathlene
Sent: Tuesday, March 05, 2013 4:03 PM
To: Copper, Carolyn
Cc: Ross, Johnny; Engelberg, Dan; Soule, Genevieve; Harris, Jeffrey
Subject: Range Resources Discussion Document (and others) for Your Review

Hi, Carolyn,

Based on our meeting last week, we developed the attached discussion draft document for your review.

(b) (5)

Let us know how you would like to deal with that information.

(b) (5)

Third, I'm attaching the current draft report version. This includes revisions based on our meeting last week and responses to your comments. The crosswalk includes page numbers for your benefit—they should line up with the page numbers in this report version. (Although, with tracked changes, we have found that the page numbers may appear differently to different people.)

Fourth, I'm attaching the senators' letter, the response Nancy and Eileen sent to one of the six requestors (Inhofe), and the notification memo we sent to EPA and used throughout our evaluation.

I think that is all for now! (b) (5)

We're looking forward to providing you with more details about that in the near future.

Katie

Page 3

From: Copper, Carolyn
Sent: Wednesday, March 06, 2013 8:53 PM
To: Butler, Kathlene
Cc: Ross, Johnny; Engelberg, Dan; Soule, Genevieve; Harris, Jeffrey
Subject: RE: Range Resources Discussion Document (and others) for Your Review
Attachments: cc-rangediscussion document.docx

(b) (5)



Thanks -- Carolyn

From: Butler, Kathlene
Sent: Tuesday, March 05, 2013 4:03 PM
To: Copper, Carolyn
Cc: Ross, Johnny; Engelberg, Dan; Soule, Genevieve; Harris, Jeffrey
Subject: Range Resources Discussion Document (and others) for Your Review

Hi, Carolyn,

Based on our meeting last week, we developed the attached discussion draft document for your review.

(b) (5)



Let us know how you would like to deal with that information.

(b) (5)



Third, I'm attaching the current draft report version. This includes revisions based on our meeting last week and responses to your comments. The crosswalk includes page numbers for your benefit—they should line up with the page numbers in this report version. (Although, with tracked changes, we have found that the page numbers may appear differently to different people.)

Fourth, I'm attaching the senators' letter, the response Nancy and Eileen sent to one of the six requestors (Inhofe), and the notification memo we sent to EPA and used throughout our evaluation.

I think that is all for now! (b) (5)

We're looking forward to providing you with more details about that in the near future.

Katie

Administration Workpaper

Prepared by Johnny Ross 03/15/2013

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: C-2-A

Assignment Guide Name: Reporting

Origination Doclink: [Notes Link](#)

Subject: [r1] Discussion Document to Counsel

Subsection:

Prepared, date	Johnny Ross, May 10, 2013
Reviewed by, date	K. Butler, 6/3/13. reviewed and approved.
Reviewed by, date	

OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Purpose: To record coordination with OIG counsel for legal sufficiency review of the discussion document prepared for the Agency.

Source: The discussion document is an original OIG document.

Scope: The discussion document provides an overview of the issues contained in the draft report. The legal sufficiency review is required by the OIG project management handbook.

Conclusion: On Thursday, March 7th, the evaluation team provided OIG counsel a copy of the AIG approved discussion document for a legal sufficiency review (attached below). See page 2. On March 13th OIG counsel responded with minor suggested changes. The team made changes as suggested and the discussion document was legally sufficient. See page 3.

Discussion Document provided to OIG counsel.

Document

PAGE 2

From: Butler, Kathlene
Sent: Thursday, March 07, 2013 11:02 AM
To: OIGCounsel
Cc: Ross, Johnny; Soule, Genevieve; Engelberg, Dan; Copper, Carolyn; Harris, Jeffrey
Subject: Congressional Request Discussion Document for LSR
Attachments: range discussion document030713.docx

Please find the attached discussion document for LSR.

During the course of this work, we discussed the issues included in this evaluation with Howard Nicholson. He may have some background on the issues that would help with the LSR process. Please feel free to contact me, Johnny Ross, or Genevieve Soule with any questions about the document.

Katie

Kathlene Butler
Project Manager, Water Programs

US EPA Office of Inspector General
Office of Program Evaluation
61 Forsyth St, SW, Rm. 12T24-A
Atlanta, GA 30303

p: 404-562-9736
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(b) (5)



(b) (5)



(b) (5)



Administration Workpaper

Prepared by: Genevieve Soule 04/25/2013

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: C-2-B

Assignment Guide Name: Reporting

Origination Doclink: [Notes Link](#)

Subject: [r1] Discussion Document Meeting with OECA 4-19-13

Subsection:

Prepared, date	Genevieve Soule, April 30, 2013
Reviewed by, date	K. Butler, 5/7/13, approved on 5/22/13.
Reviewed by	

Title: Discussion Document Meeting with OECA 4-19-13

Purpose: To draw conclusions based on the the discussion document meeting with OECA on 4-19-13 and determine how they are applicable to the draft report. (<--Can you revise this please? We can't use "to document" as a purpose. We could say "to draw conclusions about how our discussion with OECA could or should impact our /draft report." --KB, 5/7/13 GS 5/8/13; ok, thank you!)

Scope: The team met with OECA and Region 6 officials on April 19, 2013 to discuss their comments on the discussion document that was sent to them on 3-14-13.

Sources:

OECA Participants

Cynthia Giles (CG), Assistant Administrator, OECA (202-564-2440)

Steve Chester (SC), Deputy Assistant Administrator, OECA (202-564-2440)

Andrew Stewart (AS), Branch Chief, Litigation and Audit Policy Branch, Special Litigation and Projects Division, Office of Civil Enforcement (202-564-1463)

Richard Albores (RA), Attorney Advisor, Litigation and Audit Policy Branch, Special Litigation and Projects Division, Office of Civil Enforcement (202-564-7102)

Region 6 Participants

Ron Curry (RC), Region 6 Administrator (214-665-2211) [on the phone]

Sam Coleman, Region 6 Deputy Administrator (214-665-3110) [on the phone]

OIG Participants

Carolyn Copper (CC), Assistant Inspector General, Office of Program Evaluation (202-566-0829)

Dan Engelberg (DE), Product Line Director (202-566-0830)

Genevieve Soule (GS), Program Analyst (202-566-1171)

Katie Butler (KB), Project Manager (404-562-9736) [on the phone]

Johnny Ross (JR), Team Lead/Program Analyst (404-562-9863) [on the phone]

Howard Nichols (HN), Attorney (202-566-0867) [on the phone]

Date, Time, Location:

April 19th, 2:30 pm EST

3204 Ariel Rios South

Washington, DC

Conclusion: The conversation with OECA and Region 6 officials did not provide the team with any information that was substantively different than what we already knew. Due to this, the initial reaction by the team is that the content of the report and recommendations does not need to change. Based on the conversation about enforcement sensitive information, the team anticipates that there may be information in the draft that OECA will say falls into this category in their comments.

Details:

CG: We have some questions for follow-up. First I want to mention that when we talk to you we tell you everything. We tell you things that are enforcement sensitive and not for sharing with the general public. I just want to flag that—some things are enforcement sensitive and we would not be releasing these under FOIA or in a congressional information request.

CC: Howard, do you have any thoughts on that?

HN: I understand the point.

CC: So, everything in this meeting is confidential?

CG: No, not by any means, it depends on you and what you put in the report.

HN: Is that the case in this situation?

CG: I'm not sure—it would depend on what the report looks like. Revealing our enforcement strategies, etc would be stuff that we would consider enforcement sensitive information.

SC: Could you maybe just revisit the process for us.

DE: Sure - we first have internal deliberations about the content of the report, then it clears a legal review, fact checking review, etc. Then, we send to you as an internal draft report for your responses. Among your responses could be, "we consider the following statements to be E.C." Then we can discuss.

CG: You have the authority to withhold information for the same reasons we do?

CC: Yes; in the end it will be our decision. We will let you know what we decide.

CG: The first point that we had is the question of the difference between the law and guidance. In preliminary findings, you state “the law states,” but this is actually the guidance. Our suggestion is to not paraphrase, just repeat verbatim.

AS: The words in background are a little different. The first bullet in background uses the word “presents” and should be “may present.” We recommend tracking the language directly, and making sure it's consistent throughout.

CG: The third bullet on second page says contamination was “more immediate” than other cases — what did that mean?

GS: We reviewed other 1431 orders within a three year period of the Range order and found a very small number of what we considered to be comparable cases. Those other cases had shown less of a direct, immediate contamination. For example the contamination may eventually reach a water supply compared to the Range case where it was already there.

RA: East Poplar was PWS.

GS: We talked about this but thought it was comparable because it was an oil and gas case. We also found one other that was related to private water well, the (b) (6) farms case.

CG: Two bullets down, talking about withdrawal, you say, “For reasons unrelated to the contamination...” What were you talking about here?

DE: We are talking about the actions they agreed to take, the ongoing fracking study. Also, that the (b) (6) situation was not addressed.

JR: In our recent re-write of the draft, we changed this statement a little bit. What we were getting at—and you will see in the draft report—is that the contamination in the groundwater had not been addressed or remediated when the Order was withdrawn.

CG: Characterization is “reasons unrelated” here.

CC: The draft report does talk about the reasons.

RA: So, the draft report actually says the reasons, this “unrelated reasons” phrase would not be included.

GS: That's a paraphrase for this particular document.

CG: Let me talk about the reasons I think it was withdrawn. 1. The (b) (6) situation. The (b) (6) situation became obvious it was not related. (b) (6) had discontinued one of two wells when this order was issued. Range briefly installed gas monitors in the home, and the results came back that there was no threat, those results were that there was no risk. 2. Legal. We had pending

cases—enforcement and court of appeals. These had been going on over a year and we were not close to getting things resolved. It didn't appear that the district court judge would follow the appropriate course, so we were going to be in a full evidentiary hearing mode. One key thing important wasn't happening while we were waiting. We didn't know what the scope of the problem was in Parker County because the testing had stopped while the case was in court. While we were waiting for this to get resolved, none of this was happening. We did not know *if these two wells were isolated problems* or a bigger problem. 3. Then there was the ORD study. This was a factor. Range was saying they were not going to participate in a cooperative way while this case was going on. *Those were the factors that all* together persuaded me that it would be good to get Range to sample the other wells.

SC: Did the resources play a factor?

CG: Yes, related to the legal work. We did not agree with the standard the judge was using, but we did not get a choice. In addition to the monetary resources, it would take us time to get through it. We were still a big distance away from getting a judge to get Range to sample other wells in Parker County.

CG: The last bullet says that the conditions leading to the order still exist. Can you explain this?

JR: I alluded to that a second ago. What we have not seen is that the groundwater is being investigated at the (b) (6) well. Because of litigation with (b) (6) Range will not sample his well. The paradox is that this is where the contamination was first found. We believe that in order for the investigation to be complete, this water should be tested as well.

CG: The conditions of the order were sampling, explosivity risk, potential of more widespread problem—those were unknowns. What is different now from that time is that, in addition to their not using the water, Range tested the explosivity and found it not high. Range has also sampled 20 wells in the area. (We were looking to these tests to gauge other contamination in nearby wells.) *The indication from those tests* is that this is not a widespread problem in the aquifer and *there is not an immediate* concern for the homeowners whose wells were not included in the original order. There was one case with high methane, turned over to the state and the state is following up. So, data indicates it is not a widespread problem. So, based on what we have now, EPA is not seeing a need for further action because the information we have now is different from what we had when we took the order. Order is still well founded and right, but the situation is not exactly the same because we have this additional information.

DE: Do questions still remain? Is it known what the conditions of the aquifer around these wells is? If you were to open a well head, would a health hazard emerge? At one point in time, EPA believed the groundwater was contaminated.

CG: His well was contaminated. We didn't know whether it was confined to this well.

DE: Is region 6 convinced that his well is no longer contaminated?

CG: Where we are is that we do not believe the situation is different at his well from the last time we had data. Bigger question to us was whether this was a broader problem. If the data indicated

there was a bigger problem, we might say this is a bigger problem. Do you agree with this Region 6?

RC: We agree.

DE: That there is no longer a need for his well to be investigated? What is the status of this well at this point? Is there a question about whether this well is still contaminated?

CG: I would say that we don't have the complete answer to that question. There is a legal and a science look. From the legal perspective, what we suspect is true is not what would prevail in a court case. Looking at this situation is less of a key point than was this the tip of a spear that would affect lots of people. We don't even know. If we were going to fight over this particular well only, that would be resource intensive. We feel reassured that this is not a wider spread problem.

RA: Range has provided $\frac{3}{4}$ of the data. Out of the hundreds of data points, the 3rd quarter data indicated one well with elevated CH₄. We shared with the well owner and TRCC.

DE: Is Region 6 comfortable with the sampling plans, etc. utilized here? Were we involved in discussing the sampling plans with them?

HN: What role is the state taking at this point?

CG: I'm not sure. They have all the data. Sampling was described in the letter. Folks from Region 6 were involved in having these conversations with them—sticking to EPA protocols, etc.

DE: So, EPA is comfortable with the quality of the data supplied by Range. The reliability of the data? That it followed protocol?

CG: They say that they did.

RA: The letter required some things, but I don't recall it requiring specific QA/QC.

CG: This is based on the information we have. To the extent you're suggesting Range was cooking their books, that's somewhat belied by the fact they submitted data identifying an elevated well.

RA: They did not submit isotopic data in the first round, but R6 asked them to, and then they submitted it for subsequent rounds.

DE: So, if (b) (6) were to want to sell his house, or ran out of money and couldn't afford to purchase water anymore and turned the tap back on. Would the situation be different for EPA?

CG: We make decisions based on the broad public health mandate. Based on the information we have, I'm not seeing a reason we would get involved. At the time, Range was involved in litigation with the (b) (6). They told us at the time they'd resolve it, settle with the (b) (6) hire

a mediator, etc. Our understanding at the time was that they were going to solve all of this. One still hopes they will do this. I have no idea who is being unreasonable—maybe they both are.

KB started explaining the recommendation in the draft report.

CG: The problem is that we could find ourselves in the same situation as in the order. We could find the contamination is the same. To the extent the well is not venting into the home, danger is not there. There is a legal question about who is responsible for this. How expensive and time consuming the thing is. If we confine ourselves to what we know, we'd be off to the races with hundreds of thousands of dollars in hydrogeologists, who is responsible, etc.

JR: As far as what would be done after contamination is determined, we are not asking that EPA expend resources to correct an unsolvable problem. The order called for water and soil testing. So, since the one area where contamination was originally found isn't included now, we are asking EPA to look at the whole area. If cleaning up the whole area is not feasible, it's not feasible. You trust Range, but in the beginning, Region 6 told us Range data was an order of magnitude lower than what EPA was finding. So, what we're saying is that the whole aquifer should be tested.

HN: We're not looking for enforcement but are looking for compliance assurance.

SC: This was an ISE situation, not necessarily a problem of compliance.

GS: In addition, our understanding was that Range's test of the soil gas was not completed the way that EPA wanted it to be.

JR: The order was about the gas associated with the water, volatilizing would create the risk.

CG: The well is disconnected now.

JR: As far as we know, the contamination is still there.

SC: Based on the testing Range is submitting to us, the 20 wells in the area, at HQ we believe there is not a bigger problem with respect to the community.

CC: But you believe it is transferred to the (b) (6) well as well?

SC: We can't make that leap. The (b) (6) well may just be in a hotspot.

JR: In 1st or 2nd round of testing, they found a well with higher levels, Range went in and vented the well. There was one, you mentioned another that we did not know about, and there is the (b) (6) well. This gets back to our recommendation. We believe it is incumbent on EPA to examine the situation.

CG: I'm only aware of one well, the (b) (6) well

JR: This is the same one we knew about. In terms of the (b) (6) well, they are testing filtered water. Would the test results be the same as testing directly from the ground? I don't think the readings would tell what is in the underground source of drinking water.

CG: I don't know the answer. I'd have to get back to you on this. The whole investigation of the hydrogeology here and potential sources of methane in the well is a very complex investigation. This is one thing we saw ourselves heading toward. If we saw there was a plume headed toward a community or something, we would have said EPA needs to do something about this.

CC: Is there ongoing monitoring R6 is doing that would account for this?

CG: Range's data is doing this. There were requirements for what they would do. All of the information we've received is that this is not a widespread problem.

RA: Others have been monitoring out there, we don't have these data, so we don't know what else may be out there.

CG: This is raising a concern for us. If we were going out to do something more, what would we be doing? This information is pointing us in the direction that there is no widespread problem.

DE: (b) (6) is pursuing Range in the court. He may get satisfaction privately.

CG: We could try to force Range to do it—where we were before. Settlement was that both parties get some things they want, no one gets everything. Good news from our perspective is that the data we got from them lessens our feeling of urgency that that hydrogeologic study is needed.

RA: They did soil gas surveys for the TRCC hearing in the beginning.

GS: These were the surveys that were not according to the protocols EPA suggested.

Administration Workpaper

Prepared by: Genevieve Soule 08/22/2013

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: C-6-A

Assignment Guide Name: Reporting

Origination Doclink: [Notes Link](#)

Subject: [r1] DOJ Response to Draft Language

Subsection:

Prepared, date	Genevieve Soule, August 22, 2013, Oct 31, 2013
Reviewed by, date	K. Butler, November 18, 2013, approved as written.
Reviewed by	

Title: US Department of Justice Response to Draft Language

Purpose: As part of the agreement to meet with us on November 8, 2012 [Notes Link](#), DOJ requested that they be able to comment on any language in the draft that referred to our interview with them, this workpaper shows that we provided them with the language and they responded.

Scope: The team sent an email to the DOJ Audit Liaison, Richard Theis, on 7/26/13 and followed up with a phone call the following week. The team sent a follow up email on 8/21/13 inquiring about their response and Mr. Theis responded the same day.

Conclusion: The Department of Justice responded on 8/21/13 that they were comfortable with the draft report language provided to them and that they had no additional comments regarding the draft report.

Details:

From: Theis, Richard P (JMD)

To: Soule, Genevieve

Cc: Ross, Johnny; Butler, Kathlene

Subject: RE: EPA OIG Draft Report Language - Range Resources

Date: Wednesday, August 21, 2013 3:27:14 PM

Genevieve-

The Department of Justice and its ENRD are comfortable with the highlighted language.

Accordingly, we have no additional comments regarding your draft report.

Please don't hesitate to contact me if you have any questions.

Yours,

Richard P. Theis • Audit Liaison

U.S. Department of Justice • Justice Management Division • Internal Review and Evaluation Office

145 N Street, NE | Suite 8W.116 | Washington, DC 20530 | (: 202.514.0469

From: Soule, Genevieve [mailto:Soule.Genevieve@epa.gov]

Sent: Wednesday, August 21, 2013 8:56 AM

To: Theis, Richard P (JMD)

Cc: Ross, Johnny; Butler, Kathlene

Subject: RE: EPA OIG Draft Report Language

Mr. Theis,

I wanted to follow up with you to check on the progress of the DOJ's response to the draft language included in the email, below. If you have any questions or need any additional information, please feel free to contact me at (202)566-1171.

Thank you,

Genevieve Borg Soule

Social Scientist

USEPA Office of Inspector General

Office of Program Evaluation: Water Programs

1200 Pennsylvania Avenue, NW

MC 2460T

Washington, DC 20460

Tel: (202) 566-1171 || Fax: (202) 566-2825 || Email: Soule.Genevieve@epa.gov

From: Soule, Genevieve

Sent: Friday, July 26, 2013 7:37 AM

To: "Theis, Richard P (JMD)"

Cc: Ross, Johnny; Butler, Kathlene

Subject: EPA OIG Draft Report Language

Mr. Theis,

Last fall, I coordinated with you to have a meeting with Ben Fisherow regarding the EPA enforcement case against Range Resources (we met with him on 11/8/12). As part of our agreement for that meeting, I am providing you with the two instances where we use information that we obtained during that meeting in our draft report (including the surrounding paragraph for context). Please provide us with your comments before August 12th so that we can take them into account in preparing the final report. I will be out of the office next week, so please contact Katie Bulter (Project Manager, 404-562-9736) or Johnny Ross (Team Lead, 404-562-9863) if you have any questions. Both are cc'd on this email.

Thank you for your help in coordinating our discussion with Mr. Fisherow. His input was very valuable to our process. We look forward to hearing from you.

Genevieve Soule

Relevant report contents:

Case law has supported the EPA's authority under the emergency powers provided in Section 1431 to "overlook technological and economic feasibility...unlimited by other constraints, [to] giv[e] paramount importance to the sole objective of the public health."[#_ftn1][1] Individuals at both the EPA and the U.S. Department of Justice explained that these statutes give the EPA the authority to take action to address emergencies proactively, even when the EPA does not have comprehensive information about the scenario. As a result, court opinions and case law have tended to give the EPA deference in these cases.

An OECA official told us that enforcing the order in the courts is usually a simple process because Section 1431 does not require absolute proof of contamination or cause. A senior U.S. Department of Justice attorney who worked on the case said that he believed that the emergency order was sufficient and could have been enforced through the courts. The EPA's assistant administrator for the Office of Enforcement and Compliance also told the OIG that she was "very confident" in the enforcement case. They both said that the EPA had enough evidence and support to enforce the order. Further, they explained that Congress designed the existing statutes to protect people; these statutes give the EPA the authority to take action to address emergencies, so court opinions and case law have tended to give the EPA deference.

Genevieve Borg Soule
Social Scientist
USEPA Office of Inspector General
Office of Program Evaluation: Water Programs
1200 Pennsylvania Avenue, NW
MC 2460T
Washington, DC 20460

Tel: (202) 566-1171 || Fax: (202) 566-2825 || Email: Soule.Genevieve@epa.gov

This email includes draft report language from the Office of Inspector General of the U.S. Environmental Protection Agency. This draft language is subject to revision by the OIG and, therefore, does not represent the final position of the OIG on the subjects reported. It is provided to you solely for the purpose of obtaining your review and comments. You are not authorized to distribute or disclose this draft language, except that you may distribute it to other persons in your organization to obtain their review and comments on the subjects reported.

From: Soule, Genevieve
To: "Theis, Richard P (JMD)"
Cc: Ross, Johnny; Butler, Kathlene
Subject: RE: EPA OIG Draft Report Language
Date: Wednesday, August 21, 2013 8:56:00 AM
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Thank you,
Genevieve Borg Soule

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Washington, DC 20460

Tel: (202) 566-1171 || Fax: (202) 566-2825 || Email: Soule.Genevieve@epa.gov

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Sent: Friday, July 26, 2013 7:37 AM
To: "Theis, Richard P (JMD)"
Cc: Ross, Johnny; Butler, Kathlene
Subject: EPA OIG Draft Report Language

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Genevieve Borg Soule

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From: Soule, Genevieve
To: "Theis, Richard P (JMD)"
Cc: Ross, Johnny; Butler, Kathlene
Subject: EPA OIG Draft Report Language
Date: Friday, July 26, 2013 7:36:50 AM

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Tel: (202) 566-1171 || Fax: (202) 566-2825 || Email: Soule.Genevieve@epa.gov

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OECA/OIG Exit Conference

Range Resources - 10/29/13

<u>NAME</u>	<u>Office</u>	<u>Phone/Email</u>
1. Dan Engelly	OIG	202-566-7830
2. Carolyn Cooper	OIG	202-566-0829
3. John Blevins	R6 EN	214-665-2210
4. Suzanne Murray		214-665-7386
5. Cheryl Seager	R6 OCE	214-665-3114
6. Timothy Sullivan	OECA/OCE	202-564-2723
7. ANDREW STEWART	OECA/OCE	202-564-1463
8. RICHARD ALBORES	OECA/OCE	202-564-7102
9. Cynthia Giles	OECA	202-564-2440
10. Steve Chester	OECA	202-564-2372
11. Kendra Hayne	OECA	202-564-6063
12. Nick Conger	OECA	202-412-2655
13. Susan Shinkman	OECA	202-564-3257
14. Gwendolyn Spriggs	OECA	202-564-2439

On the Phone:

OIG

Kathleen Butler
Genevieve Soule
Johnny Ross



Office of Inspector General

Administration Workpaper

Prepared by Johnny Ross 10/31/2013

Assignment: 2012 - 3018 - OPE-FY12-0019 - Review of Region 6 Emergency Administrative Order against Range Resources

Area: 145

Goal: A Credible Deterrent to Pollution and Greater Compliance with the Law

Type: PERFORMANCE/PROGRAM Subtype: Not Used

Assignment Period: 06/22/2012 through 06/22/2012

Section: C-6-F

Assignment Guide Name: Reporting

Origination Doclink: 

Subject: [r1] Exit Conference with Agency

Subsection:

Prepared, date	Genevieve Soule, November 7, 2013
Reviewed by, date	K. Butler, November 18, 2013, reviewed and approved.
Reviewed by, date	

Title: Exit Conference

Purpose: To document the exit conference and the outcome of the discussion

Scope: Subsequent to receiving the Agency comments, the team reached out to Region 6 and OECA to hold and exit conference to discuss the Agency's comments on our report and response to the recommendations, we sought clarification on recommendations 1 and 2. The exit conference was held on 10/29/13.



Sources: exitconference attendees.pdf

OECA Participants

Cynthia Giles (CG), Assistant Administrator, OECA (202-564-2440)

Steve Chester (SC), Deputy Assistant Administrator, OECA (202-564-2440)

Andrew Stewart (AS), Branch Chief, Litigation and Audit Policy Branch, Special Litigation and Projects Division, Office of Civil Enforcement (202-564-1463)

Richard Albores (RA), Attorney Advisor, Litigation and Audit Policy Branch, Special Litigation and Projects Division, Office of Civil Enforcement (202-564-7102)

Region 6 Participants

John Blevins, Director, Compliance Assurance and Enforcement Division, Region 6, (214

665-2210)

Cheryl Seager, Region 6, Deputy Regional Counsel for Enforcement (214-665-3114)

Susan Jenkins, Region 6, Auditor Coordinator (214-665-6578)

OIG Participants



Carolyn Copper (CC), Assistant Inspector General, Office of Program Evaluation (202-566-0829)



Dan Engelberg (DE), Product Line Director (202-566-0830)

Genevieve Soule (GS), Program Analyst (202-566-1171) [on the phone]

Katie Butler (KB), Project Manager (404-562-9736) [on the phone]

Johnny Ross (JR), Team Lead/Program Analyst (404-562-9863) [on the phone]

Conclusion: (For recommendation 1, the OIG requested that the Agency commit to evaluate the information that they receive, and take appropriate actions should it determine that the data are not sufficient for it to reach a conclusion concerning the level of contamination of the underground source of drinking water. (Details, Reference A ) (We discussed this recommendation with the Agency in an exit conference. At that time, the EPA agreed that it will take appropriate steps should any of the information it receives indicate a potentially significant data quality concern. (Details, Reference B )

For recommendation 2, the OIG requested that the Agency commit to taking action should the data collected indicate imminent and substantial risks to other drinking wells in the involved area. We discussed this recommendation with the Agency in an exit conference. (Details, Reference C ) At that time, EPA agreed that should any of the sampling data being collected by Range Resources reveal imminent and substantial risks to other drinking wells in the involved area, that EPA will take appropriate action by the end of the first quarter of FY 2014. (Details, Reference D )

E Based on our discussions and agreements with EPA, recommendations 1 and 2 are resolved and open with corrective actions underway. (OIG Conclusion based on information in this WP)

Details: During the meeting, we discussed the two outstanding issues that OIG had with the

Agency response - regarding recommendations 1 and 2. **A** The OIG pointed out that although they sent the letter to Range resources in August requesting additional information, we wanted assurance that they evaluate the information that they receive, and take appropriate actions should it determine that the data are not sufficient for it to reach a conclusion concerning the

level of contamination of the underground source of drinking water. **B** OECA and Region 6 both agreed that that was their intention and that they would take appropriate steps should any of the information it receives indicate a potentially significant data quality concern..

C For the second recommendation, the OIG pointed out that they understood OECA's point about the ISE no longer existing at the original well, but that the Agency should take action should the data collected indicate imminent and substantial risks to other drinking wells in the

involved area. This would mean that the recommendation status would change from "no further action" to "resolved with corrective actions pending." **D** At that time, EPA agreed that should any of the sampling data being collected by Range Resources reveal imminent and substantial risks to other drinking wells in the involved area, that EPA will take appropriate action by the end of the first quarter of FY 2014.

Gwen Spriggs requested that we send an updated version of the table to them for review, and the OIG agreed.

Status: Approved
Current Editor List:

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Level 2 approval: Approved

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Kathlene Butler Granted Mass Approval 01/13/2014 03:34:32 PM
Dan Engelberg Granted Mass Approval 04/11/2014 10:37:32 AM

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